The Complete Anti-Federalist

Edited, with Commentary and Notes, by

Herbert J. Storing

With the Assistance of Murray Dry

VOLUME 4

Massachusetts and New England

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A Note on Cross References

For convenient cross reference, and without any other editorial purpose, a three-part number has been assigned to each paragraph (or group of paragraphs where they are brief) of the writings assembled in *The Complete Anti-Federalist*. The first number denotes the volume, the second the position of the essay or series within that volume, and the third the paragraph. A reference to, for example, Federal Republican 3.6.13 locates a passage in the Review of the Constitution Proposed by the Late Convention, by A Federal Republican, which can be found in volume 3 of this edition. These numbers are distinct from any numbering by the authors themselves or any of their publishers; Centinel III, 2.7.73 refers to the third letter of Centinel, in volume 2 above. The abbreviation "intro." is used for Storing's introductions to volumes or parts of volumes as well as the introductions to individual texts. A reference to, say, 2.8.intro. denotes the introductory sketch and outline of the Federal Farmer, located in volume 2. Cross references to volume 1 are by page number. A cross reference from one note to another uses a three-part number plus a note number, so that the reader may refer to the text as well as the note if necessary.

Murray Dry

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Massachusetts and New England

Introduction

As winter wore on, the focus of debate moved northward. By January 1788 five states had ratified the Constitution—Delaware, Pennsylvania, New Jersey, Georgia, and Connecticut—all with comparative ease and in four cases unanimously or nearly so.[1] But among these only Pennsylvania was a major state, and there the opposition was unreconciled to defeat. The Massachusetts convention was to meet on 14 January; and an unfavorable decision there would strengthen the opponents of the Constitution in the remaining states, while giving encouragement to the adamant Pennsylvania Anti-Federalists.

The contest over ratification in Massachusetts was preceded by a decade of factional contention, leading to civil disturbances and culminating in the famous Shays Rebellion.[2] The rebellion centered in western Massachusetts, where the economic depression following the dislocation of the war was most severe, where hard currency was scarce, and where the courts and lawyers were a target of popular resentment. Opposition to the Constitution was centered in this western part of the state, but there was a distinct lack of leadership. Few of the eastern Anti-Federalists, who provided essays and pamphlets read all over the country, were elected to the ratifying convention, where the Anti-Federalists, while strong in numbers, had no spokesmen able to contend with the Federalists.[3] To a striking extent the Anti-Federalist delegates in democratic Massachusetts were preoccupied with a rather undifferentiated fear of abuse of power and trickery from the propertied and educated classes.

When the ratifying convention met, there was, from all accounts, a majority opposed to ratification; yet after close to a month of debate a sufficient number of delegates changed their minds to give the Federalists a small majority. The Federalists, proceeding cautiously, succeeded in securing clause-by-clause consideration of the Constitution, fearing (and apparently with good reason) that an early vote would go against them. In this they were aided by Samuel Adams, who, although generally thought to be unfriendly to the Constitution, threw his considerable weight on the side of full deliberation and, in one of his few speeches at the convention, supported clause-by-clause consideration. John Hancock, governor of Massachusetts and president of the convention, also provided crucial support. Popular, vain, and extremely sensitive to currents of opinion, Hancock was prevented by a genuine but manageable illness from occupying the chair until the issues and the lines of division had begun to come into focus. When he did appear, Hancock pro-

posed a group of amendments to the Constitution, which Samuel Adams endorsed. The statements of both men were, probably deliberately, somewhat ambiguous about whether the amendments were to be a condition of ratification or merely recommendatory. As debate continued, sentiment for ratification increased, with the Federalists supporting recommendatory amendments; and neither Hancock nor Adams pressed for conditional ratification. Whatever their motives (a much-canvassed question), Hancock's and Adams' actions were of the utmost importance in securing ratification in the crucial state of Massachusetts and in introducing recommendatory amendments. This proved to be the compromise used to secure ratification in other states, tempering the opposition of the Anti-Federalists while maintaining the integrity of the Constitution.

On 6 February 1788 the Constitution was adopted by the Massachusetts convention by the narrow margin of 187 to 168, and the recommendatory amendments were agreed upon. Several Anti-Federalists who had voted against the Constitution rose to express their acceptance of the majority determination.[4] In marked contrast to events in Pennsylvania, opposition largely ceased in Massachusetts once the Constitution was adopted.

1. See John A. Munroe, *Federalist Delaware, 1775–1815* (New Brunswick, N.J., 1954); Richard P. McCormick, *Experiment in Independence: New Jersey in the Critical Period, 1781–1789* (New Brunswick, N.J., 1950); William W. Abbot, "The Structure of Politics in Georgia, 1782–1789," *William and Mary Quarterly* January 1957; Kenneth Coleman, *The American Revolution in Georgia, 1763–1789* (Athens, Ga., 1958); Bernard C. Steiner, "Connecticut's Ratification of the Federal Constitution," *Proceedings of the American Antiquarian Society* n.s. 25 (1915): 70–127.

2. For background in Massachusetts, see Richard B. Morris, "Insurrection in Massachusetts," in *America in Crisis*, ed. Daniel Aaron (New York 1952); George R. Minot, *The History of the Insurrection of Massachusetts* (Boston 1810); Samuel Eliot Morison, "Struggle over the Adoption of the Constitution of Massachusetts, 1780," Massachusetts Historical Society, *Proceedings* 50 (1917): 353–411; Anson Ely Morse, *The Federalist Party in Massachusetts to the Year 1800* (Princeton 1909); David H. Fischer, "The Myth of the Essex Junto," *William and Mary Quarterly* April 1964.

3. Thus *Centinel* regrets that in Massachusetts "the cause of liberty has been so weakly, although zealously advocated—that its champions were so little illuminated." Centinel XV, 2.7.166. See generally Samuel Bannister Harding, *The Contest over the Ratification of the Federal Constitution in the State of Massachusetts* (New York 1896).

4. The New Hampshire convention met on 13 February; opposition was similar in character and strength to that in Massachusetts, and the Federalists, fearing defeat, succeeded in gaining a postponement of the convention until the middle of June. Joseph B. Walker, *Birth of the Federal Constitution* (Boston 1888).

Anon.
"A confederation, for purposes merely national . . ."

MASSACHUSETTS GAZETTE
9 October 1787

The following remarks are interesting chiefly because they are identified by William W. Crosskey as containing one of the rare attacks on the power of Congress to regulate commerce and as supporting his view that the power to regulate commerce among the several states was intended to include all commercial intercourse in the United States.[1] The remarks were reprinted rather widely and elicited two replies discussed by Crosskey (one of which flatly contradicts his thesis).[2]

1. *Politics and the Constitution* I, 188.
2. Ibid., pp. 188–89.

The following remarks are handed to us by a correspondent as being very serious difficulties in the way of the new confederation, notwithstanding the pains which have been taken to prove, that it could not contain any thing wrong.

A confederation, for purposes merely national, would undoubtedly be exceedingly beneficial to these states. Every one should, however, be indulged in a free, but decent, examination of every proposed form. 4.1.1

In general, publick business would go on smoothly when the mode of doing it is conformable to the habits of the people, and when employment is found for their activity.[1] Let us upon these principles review the newly proposed federal constitution.

The several states are to be represented by a small number of persons, who, during the long period for which they are to be chosen, will be invested with almost every branch of legislative authority, and will generally reside without the states represented by them. 4.1.2

Their authority will extend not only to the foreign commerce but to the internal economy of the states. They are to keep up armies within the states at all times, and to have the sole power of calling the militia into service, excepting the case of foreign invasion. The states therefore lose the right of compelling the obedience of their own subjects.

4.1.3 No state will be able to pay its debts otherwise than by a dry tax; imposts and excises being applied wholly to continental purposes. The several states are not allowed to certify their own debts, even without making their bills a tender.

Titles of land in many cases are to be tried by a continental court. This gives the national government unequal authority in different states, and creates different interests. Some states will lose their whole jurisdiction over real estates; and the large state of Vermont will be excluded from the union.[2]

4.1.4 These are great difficulties and ought to be well weighed before the system is adopted, which will forever put it out of our power to remedy them, otherwise than by force of arms. Our people are every day coalescing under a wise and moderate, but firm, government. Let us not hastily divide them.

Thanks are due to the gentlemen who have come so near the truth in a matter of such importance to us all. But it will probably be found necessary to have this system carefully revised and corrected, before it will be perfect, and be likely to promote the happiness of any state in the union; as it does not at present conform to their established habits.

1. A writer signing himself "Convention" replied: "Is this *antifederalist* to be informed at this time of day, that the 'habits' of the citizens of America are very dissimilar?—And that this is owing in a great measure to the disuniting and discordant principles of the separate Constitutions of the States, and the want of a federal Government?—It is in vain to expect a *national trait* in our characters, or a similitude of *habits*, but as the effect of a *national efficient government*—Virtue or good habits are the result of good laws—and from the excellent American Constitution those *habits* will be induced, that shall lead to those *exertions*, *manufactures* and *enterprizes*, which will give a scope to the American genius, and 'find employment for their activity.' " *Massachusetts Centinel* 13 October 1787. See the similar exchange below, Federalist 4.7.1 n. 1.

2. See the discussion by Curtis, *Constitutional History* I, 538–44.

A Letter from a Gentleman in a Neighbouring State, to a Gentleman in this City

CONNECTICUT JOURNAL
17 and 24 October 1787

In this rather superficial criticism, A Gentleman from Massachusetts covers many standard Anti-Federal objections concerning the aristocratic principle and tendency of the new Constitution; the inadequate representation; the unconstitutional method of ratification; and the dangerous power of Congress to regulate federal elections, to tax, to dispose of territories belonging to the states, to establish unnecessary inferior courts, to establish armies, and to use the militia to enforce the laws. More significant and interesting is his discussion of the complexity and mystery of the Constitution, especially in the provisions dealing with slavery (4.2.8–9). A Federalist satire and reply was printed in the *Connecticut Journal* on 24 and 31 October.

Dear Sir,

I received your favour of the 24th ult. inclosing the doings of the Convention at *Philadelphia*, directed to his excellency the president of Congress in three days after the date, which favour I should have highly prized, had you not at the same time, enjoined it upon me, to make my objections to them (if any I had) and likewise that I would point out, any alterations that may be made in our present articles of confederation, which will better secure the natural rights, privileges, and liberties of human nature, and at the same time, effectually support the authority and dignity of the states, and public faith. I now sit down to perform the *first part* you have enjoined upon me, but with great reluctance, for reasons I shall assign in my next, which I esteem the most arduous task you have assigned me, which you claim as a debt due both to the public and yourself. 4.2.1

My objections to the doings of our honourable Convention are *many*, you must excuse me if I do not mention one half of them—I must be concise—shall mention only those which I conceive are CAPITAL, and would first observe *generally*.—The form of government prescribed is too COMPLEX, 4.2.2

couched in terms, in many instances *doubtful* as though there was some *art* used to cover the full extent of the powers delegated, to be easily understood, by all who ought to accept or reject the same—and that the form of government recommended, most probably will be attended with greater expence than can be supported by an infant country, exhausted of her wealth by the late war, and impoverished by our own follies and luxuries since the peace, and the loss of our trade, the recovery of which, there is not the least prospect, as restraints are laid upon it, by all the powers in *Europe*, which however I look upon, a circumstance much in our favour, as it will gradually serve to disconnect us from the nations of Europe, for I have no desire we should import either foreign LUXURIES or foreign VICES.

4.2.3 A gradual decay of our trade, must gradually increase our own manufacturers—which must encrease industry, which will have a powerful influence to reform our morals; nothing will promote *industry* so powerfully, as *necessity*, unless it is crampt by an arbitrary sovereign and despotic government. No man will work with that chearfulness for his *lord*, as he will when he knows his earnings are his own, nor do I think this *three branch'd* government, will sit easily on the minds of the *people*, whose peace and quiet must be consulted, or we shall have trouble. The *populace* or *multitude* as they are now called in *contempt*, when we first opposed British tyranny, were complimented by the *patriots* of that day, in *halls* and under liberty poles, as being the fountain and origin from whence *all power* was derived, will not sit easy under any government, where they are deprived of *all power*, or so fettered in the exercise of what little power is left in their hands, as will do them but little service. The chief agents in this new form of government planned out by *Convention*, assume the *humble title* of *president*, *senate*, and *representatives*, but really are vested with the powers of *King*, *Lords*, and *Commons*, and although the government seems to be *elective*, their stations will be secured as ample, I humbly conceive, as though they were made *hereditary*, as the rights of the electors appear to be so much fettered, as to leave but little power in the hands of the people.—My *particular objections* are first to the third paragraph in Sect. 2. Art. I, which is in the following words—"Representatives and *direct taxes*, shall be apportioned among the several states, which *may be included in this union*, according to their respective numbers, which shall be determined, by adding to the whole number of *free persons*, including those bound to service for a term of years, and excluding *Indians* not taxed, *three fifths of all other persons*." Was not this form of words thus uncouthly used to avoid using the word *Negroes?* It certainly looks as though the word *Negroes* was omitted from some *design*, it cannot be from any fear of offending that nation of *Africans*. Why must that man that has 500 slaves in our southern states, where slaves are looked upon only as *personal property*, have 300 of them exempted from *capitation*, while an inhabitant of the northern states, possessed of the same number of horned cattle, horses and hogs, be obliged

to pay for the whole number? They are all considered as *chattles*. But to proceed, "The number of representatives shall not exceed *one* for every thirty thousand, but each state shall have at least *one representative:* and until such enumeration shall be made, the state of New-Hampshire shall be permitted to chuse *three*, Massachusetts *eight*, Rhode-Island and Providence Plantations *one*, Connecticut *five*, New-York *six*, New-Jersey *four*, Pennsylvania *eight*, Delaware *one*, Maryland *six*, Virginia *ten*, North-Carolina *five*, South-Carolina *five*, and Georgia *three*." My objections to this part of the paragraph, are, that the representation is by far too small, to transact the business of so large an empire, our state assemblies may be annihilated, having nothing to do of importance; the power of taxation being vested in Congress, all other business may be transacted in our town meetings.—A large representation has ever been esteemed by the best whigs in Great-Britain, the best barrier against *bribery* and *corruption*, and yet we find a *British king*, having the disposition of all places, civil and military, & an immense *revenue*, SQUEEZED out of the very mouths of his wretched subjects, is able to corrupt the parliament, to vote him any supplies he demands, to support armies, to defend the prerogatives of his crown, and carry fire & sword by his fleets and armies; to desolate whole provinces in the *eastern world*, to aggrandize himself, and satisfy the avarice of his tyrannical subjects.

No wonder our American ambassador, struck with the *brilliancy* of the British court, where every thing around St. James's wears the appearance of wealth, ease, and plenty, should imagine a *three branched legislature* only can produce these effects, and make the subjects happy, should write a book in favour of such a government,[1] and send it over for the *illumination* of this western world; if this is the sole fruit of his embassy, America will not *canonize* him for a saint on account of his services, when they have experienced the consequences of such a kind of government as he has planned out. In order to have formed a right judgment, he should have looked into the *ditches* which serve for graves for many of the human race—under *hedges* which serve as dreary habitations for the living—into the *cottages* of the poor and miserable, and critically examine with how much parsimony the mechanicks, the day labourers, cottagers and villagers live in order to support their *high pampered lords*, before he had wrote a *book* to persuade his country to persue the same road to greatness, splendor and glory, and have reflected in his own mind, whether he could wish to see that country which gave him birth, reduced to the same situation.—By this arrangement of representation it seems this large and extensive empire which in half a century will probably be double in number to the inhabitants of Great-Britain, will be governed by 68 representatives, of which six of the northern states will be represented by 27 ONLY, and the southern states by 41.[2] No marvel that three fifths of the *slaves* are exempted from capitation in taxation. 4.2.4

4.2.5 The commons of England if my memory serves me, consists of 5 or 600 or upwards, yet the king of Great-Britain, if we may believe their own writers, has it in his power by *places* and *pensions*, to corrupt a majority of his *commons*, that his ministers can carry any vote they think proper to propose, to support the *dignity* of his crown, and *rapaciousness* of his ministers.

4.2.6 Therefore should Congress at any future period grow *haughty*, *insolent* and *oppressive*, they will have it in their power by *places* and *pensions*, which they are amply enabled to establish by the sale of the western lands, which by this Constitution is wholly resigned into the hands of Congress, to be at their disposal, which will be sufficient to corrupt a house of representatives, double in number to the Commons of Great Britain. I now would make my objection to Sec. 4th which is in these words, "The *times*, *places*, and *manner* of holding election for *senators*, and *representatives* shall be prescribed in each state by the legislature thereof; but the Congress may at any time alter or make such regulations, except as to the place of chusing senators." The plain meaning and understanding of which I take to be this, that Congress gives liberty to the assemblies of each state, to make such regulations respecting the *time*, *place*, and *manner* of chusing *senators* and *representatives*. But if they do not improve it to their liking, they can alter it at pleasure, except the place of choosing. This is a most *liberal* and *extensive favour*, granted to the assemblies of these state, which Congress can again at any time at pleasure revoke; therefore it will be prudent to use that liberty, and choose such *senators* as shall be acceptable to Congress, or they may expect pretty soon to have such rules prescribed them, as to the *time* and *manner*, as will better comport with the views and designs of Congress, when moddled according to their NEW PLAN—prescribed by Convention. Passing over many lessor matters I proceed to Sec. 7, which is in these words, "All bills for raising a *revenue* shall originate in the house of *representatives;* but the SENATE may propose or concur with amendments as on other bills." I would here only observe that the *Commons* of *Great Britain* will not suffer the house of *Lords* to make the least alteration in a money bill, however the crown has found means to corrupt a sufficient number of the Commons to draw forth the *blood* and *treasure* of the nation. I now proceed to Sec. 8, in these words, "The Congress shall have power to lay and collect taxes, duties, and excises to pay the debts, and provide for the common defence and general welfare of the United States."—And the second paragraph of the 3d Sec. Art. 4th, contains these words, "The Congress shall have power to *dispose of*, and make all needful rules and regulations, respecting the *territory* and *other property* belonging to the United States." By the first recited paragraph, we vest Congress with full power to lay and collect by their own authority what *taxes*, *duties*, and *excises* they please, and by the second we surrender into the hands of Congress all the western territory, of larger extent I conceive than the kingdoms of Great

Britain and Ireland, the richness of the soil, let those who have seen it declare. But so concise, and so ample a conveyance of such a extent of territory, couched in such smooth and easy language I never before read. I was so struck with the elegance of the stile, I never once thought of it being a conveyance of land, until I had read it over three or four times.

Now I submit it to the good sense of the people of these states, whether it is prudent we should make so liberal and extensive a grant of *power* and *property* to any body of men in these United States, before they have ever informed the public, the amount of the public debt, or what the annual expences of the federal government is, or will be. It is now almost five years since the peace; and Congress has employed thirteen commissioners, at 1500 dollars per annum, as I am informed, to settle the public accounts, and we know now no more what the national debt is, than at the first moment of their appointment—nor do we know any more what is the amount of the annual expences of the federal government, than we do of the empire of China.[3] To grant therefore such an ample power of taxation, and the right of soil, to the amount of millions, upon the recommendation of this hon. Convention, without either knowing the amount of the national debt, or the annual expences of government, would not argue, in my opinion, the highest degree of prudence. 4.2.7

(*The remainder in our next.*)

(*Concluded from our last.*)

I also object to the 9th paragraph of Sec. 8th, which is in these words, "To constitute tribunals, inferior to the Supreme Court." We have I humbly conceive law tribunals erected already, which are sufficiently expensive to exhaust the wealth of our richest citizens, and humbly implore, *Convention, Congress,* and the *assemblies* of the states, not to constitute any more. The *shortest,* the *cheapest,* and the *most expeditious* method to obtain distributive justice, between man and man, is to be prefered in any state, and the sooner that matter is taken up, by the several legislatures of the states, to shorten law processes, the better, and unless *speedily* effected we shall be *speedily* undone. My next objection is to the 12th paragraph of Sec. 8th, in these words, "To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years." A great deal of mischief may be done in two years, with *guns, swords,* and *bayonets,* and armies when once *raised,* it hath some times been found difficult to *disband.* I should therefore not think it prudent for Congress ever to raise an army merely to subdue *Wabash Indians,* or any one single tribe. Should there be a general combination of all the tribes, or the states be invaded by a foreign enemy, Congress by our present articles of Confederation, are vested with full powers to draw out the military force of the states, nor have the states 4.2.8

failed hitherto of complyance in this regard; but to limit them to two years, is an affront offered to the dignity of Congress, and appears as tho' we were affraid to trust the military force of the states in their hands, when there is just occasion. I take that to be one principal part of the business of Congress, to conduct the military arrangements of all the states, when judged necessary for the general safety. My next objection is to the 15th paragraph, which is in these words, "Congress shall have power to provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions." This looks too much like Baron Stuben's *militia*, by which a *standing army* was meant and intended;[4] I would only observe, to take the military force of the states out of the hands of their respective governors, is a manifest indignity offered to them, as they ever have had the sole and exclusive command of the militia of the respective states; I observe the expression used is, *"To execute the laws of the union."* In fact it means, to convert the *militia* of the states, into a *standing army*, under the entire command and controul of Congress; and I would only observe further, *that government* and *those laws* which require a standing army to enforce them, ought not to be supported in any nation under heaven.[5] My next objection is to the first paragraph of Sec. 9th, in these words, "The *migration* or *importation* of such persons as any other states now existing shall think proper to admit, shall not be prohibited by Congress prior to the year of 1808. But a tax or duty may be imposed on such importation not exceeding ten dollars for each person." Why this sentence should be couched in this *blind mysterious form of words*, unless again to avoid using the word *negroes*, I must leave those that drew it to explain?

4.2.9 But should think we have no right to complain of the *Algerines*, who live on the coast of *Africa* if they enslave the *Americans* whom they find sailing in those seas. If we will send our vessels across the *Atlantic*, of set design, to *purchase*, *kidnap*, and *decoy* the inhabitants of the more southern states of the globe.

That man that will give his vote to import *africans* for the space of 21 years, to drag out a miserable life in *slavery*, will vote to enslave the *Americans* at the end of that period.—The cry has been, *enlarge the powers of Congress*—enable them to *regulate trade;* but it seems this Convention will not permit Congress, to prevent the importation of *slaves* for 21 years yet to come.—The *seeming care* taken to cover the true intent, and meaning of this, and some other parts of the doings of that Convention, will be sufficient reason in my mind, not to vote for one single paragraph it contains.[6]

4.2.10 I shall make one short remark more on the 8th paragraph of this section, viz. "No title of NOBILITY shall be granted by the United States." Congress, in our articles of Confederation, have used the same precaution; nevertheless the officers of the army have incorporated themselves into a society known by the name of the CINCINNATI. The views of which society, have been fully laid open by the Honorable AEDAMUS BURKE of *South-Carolina*,[7]

which will, if neglected, finally terminate in NOBILITY. It was no doubt founded with those views, and if permitted to have their annual meetings in the manner they have begun, once in a year or oftner, it will be found they will not fail of the original design of their *voluntary incorporation*.—Not being able to pay the grant made to officers and army, we now pay the annual interest of their grant, being in the whole 99,000, which must till we are able to discharge the principal, be considered as a *pension*. The principal, I presume, never can be paid, but by the sale of the lands ceeded to the states by treaty.—Nor do they fail to put themselves in the most respectable light, upon all public occasions; I see they convened at New-Haven, at your public commencement, walked in *procession* with his excellency your Governour, President, Corporation, and Tutors of your College, and the Clergy of the state, and I observe were DUBBED, *the honorable society of the* CINCINNATI.

Omitting many other, perhaps very exceptionable—I will just make one observation on the 7th Art. which says, "The ratification of *nine states* shall be sufficient for the establishment of this constitution, *between the states so ratifying the same*." I would just recommend it to the members of our hon. Convention, to reconcile this 7th Art. with the 13th Art. of our Confederation, which says, "The articles of this Confederation shall be observed by every state, and the union be perpetual, nor shall any alteration at any time be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterward confirmed by the legislature of *each state*." It appears as tho' the Convention had wholly overlooked the 13th Art. of our Confederation. Another thing is obvious by this 7th Art. it seems as tho' the *nine southern states* had prepared their matters in such a manner, that they are ready prepared to dismiss the *four northern states*, if they do not think fit to adopt the doings of this Convention, and be ready organized to proceed without them, as tho' it was what they expected or desired.[8] The third paragraph in the second Sec. has a passage of the same complexion, in these words, "Representatives and direct taxes shall be apportioned among the several states, which MAY be *included* within this union." Thus I have only hinted at some of the doings of this Convention which I am able to understand; many other dark and mysterious parts of it, which are beyond my comprehension, I must leave to you and others to unfold.—One thing more, however, is beyond me, which I must mention. The assemblies of the states it seems, will not do to ratify or reject this new Constitution, but it must be done by a CONVENTION, chosen by the PEOPLE, under the recommendation of their legislatures. It is perhaps not so difficult to comprehend the meaning of this measure, as to explain it to the understanding of every one.—The other part you have assigned me, I shall attempt as soon as I can arrange my ideas properly.[9] In the mean time, I am, &c. Yours.

4.2.11

State of Massachusetts, Oct. 4th, A.D. 1787

1. John Adams, *Defence of the Constitutions of Government of the United States.* On Federalist visions of national glory see Henry, 5.16.2 n. 11.

2. The original apportionment, to which the writer is evidently referring, provided for 65 (not 68) representatives, 27 for the northern states as here defined (those above Pennsylvania) and 38 for the southern. The author seems to imply, incorrectly, that the representation cannot be increased as the population grows. See *The Federalist* nos. 55–58.

3. See Jensen, *New Nation* 377 ff.

4. See von Steuben's *A Letter on the Subject of an Established Militia* (New York 1784), Evans, *Early American Imprints* no. 18796.

5. The Federalist antagonist replied: "When the Congress resort to the militia, which is the body of the people, for the support, and execution of the laws of the union, it is done in confidence that the laws are just and good, and worthy of the support of the people, otherwise Congress can have no reason to expect support from that quarter." *Connecticut Journal* 31 October 1787. See Brutus IX, 2.9.110 n. 73.

6. The Federalist rejoinder was that "the constitution does every thing which a constitution could reasonably do. It provides for the interest of the southern states, and at the same time manifests to the world that slavery is inconsistent with the views and sentiments of this country, which error will be reformed as soon as it can be done consistent with the interest of the people." *Connecticut Journal* 31 October 1787. For references to other discussions of the slave trade, see Martin 2.4.15 n. 24.

7. Aedanus Burke, *Considerations on the Society or Order of Cincinnati* (1783), Evans, *Early American Imprints* nos. 17861–66.

8. On separate confederacies, see vol. 1 above, ch. 4 n. 2; Centinel XI, 2.7.142 n. 75; Henry 5.16.11 n. 25. "The oblique hint, lately given in public, that it would be adviseable to separate the four northern states from the rest, proves the author to be no real friend to the welfare of the country." *Connecticut Journal* 31 October 1787.

9. No second letter, treating desired amendments to the Articles of Confederation, seems to have been published.

Essays of John DeWitt

(BOSTON) AMERICAN HERALD
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While Samuel Bannister Harding may overstate the case when he describes the essays of "John DeWitt" as "constructed with consummate skill,"[1] they do carry a good deal of solid argument as well as rhetorical power.

John DeWitt begins with a picture of the very favorable political conditions in America, which stand in striking contrast to those of the rest of the world and which were only incidentally and temporarily disturbed by mistakes and imprudencies of the last year (4.3.1–3.2). While everyone admits that the powers of Congress are inadequate, there is no need for a hasty decision (4.3.2). The new government will not work miracles, for the excellence of any government depends on its administration (4.3.4). The Union must indeed be preserved and strengthened, but the broad aims should be to discourage all foreign importations; to encourage greater economy, industry, and self-sufficiency; and to pursue a politics of measures rather than men (4.3.5).

In the second essay the author emphasizes that the proposed Constitution, if adopted, will be practically permanent because of the extreme difficulty of amending it (4.3.6). While not making the absence of a bill of rights a major objection, John DeWitt denies James Wilson's contention that a bill of rights is unnecessary and inappropriate (4.3.7), and he provides one of the best Anti-Federalist discussions of the vexing question whether all powers not given to government are reserved or all powers not reserved are given (4.3.8). The essay ends with a long and comprehensive statement of objections to the Constitution, culminating in the charge that it will destroy the excellent constitution of Massachusetts (4.3.9).

In the third and fourth essays John DeWitt presents the heart of his objection to the Constitution. Considering both the Constitution itself and its advocates, he contends that this is not a government of genuine consent; it is in fact an aristocracy, possessing excessive powers, which is certain to swallow the state governments (4.3.10). His argument is that all men thirst for power; that consequently governments are organized into different branches which check each other; that the checks in the Constitution are

inadequate—the Senate is too powerful, representation in the Senate is unequal, the checks of the executive and the House of Representatives are weak—that the House is in any case not representative of the people, and is in fact an "Assistant Aristocratical Branch" (4.3.14); and that the powers to be given to the new government are excessive (4.3.12–14). The fourth essay contains a lengthy discussion of the power of internal taxation, its odiousness and ineffectiveness in general, especially in a government so large and so little representative, and the likelihood that this power will lead to arbitary and tyrannical government (4.3.20–23).

The last essay is taken up largely with a discussion of the Constitutional provisions relating to the militia and standing army, which betray a reluctance to trust the armed people and an intention to rule by military force (4.3.27–32). The paper contains some interesting remarks on the workings of a free, industrious society where the people are too busy to concern themselves much with the principles of their government but where, retaining the political power, they insist on receiving reasoned explanations and arguments from the knowledgeable few who concern themselves with such matters (4.3.24).

1. Harding, *Contest over Ratification* 24.

I

To the Free Citizens of the Commonwealth of Massachusetts.

4.3.1 Whoever attentively examines the history of America, and compares it with that of other nations, will find its commencement, its growth, and its present situation, without a precedent.

It must ever prove a source of pleasure to the Philosopher, who ranges the explored parts of this inhabitable globe, and takes a comparative view, as well of the rise and fall of those nations, which have been and are gone, as of the growth and present existence of those which are now in being, to close his prospect with this Western world. In proportion as he loves his fellow creatures, he must here admire and approve; for while they have severally laid their foundations in the blood and slaughter of three, four, and sometimes, ten successive generations, from their passions have experience, every misery to which human nature is subject, and at this day present striking features of usurped power, unequal justice, and despotic tyranny, America stands completely systemised without any of these misfortunes.—On the contrary, from the first settlement of the country, the necessity of civil associations, founded upon equality, consent, and pro-

portionate justice have ever been universally acknowledged.—The means of education always attended to, and the fountains of science brought within the reach of poverty.—Hitherto we have commenced society, and advanced in all respects resembling a family, without partial affections, or even a domestic bickering: And if we consider her as an individual, instead of an undue proportion of violent passions and bad habits, we must set her down possessed of reason, genius and virtue.—I premise these few observations because there are too many among us of narrow minds, who live in the practice of blasting the reputation of their own country.—They hold it as a maxim, that virtues cannot grow in their own soil.—They will appreciate those of a man, they know nothing about, because he is an exotic; while they are sure to depreciate those much more brilliant in their neighbours, because they are really acquainted with and know them.

Civil society is a blessing.—It is here universally known as such.—The education of every child in this country tends to promote it.—There is scarcely a citizen in America who does not wish to bring it, consistent with our situation and circumstances, to its highest state of improvement.—Nay, I may say further, that the people in general aim to effect this point, in a peaceable, laudable, and rational way. These assertions are proved by stubborn facts, and I need only resort to that moment, when, in contest with a powerful enemy, they paid such an unprecedented attention to civilization, as to select from among themselves their different conventions, and form their several constitutions, which, for their beautiful theoretical structure, caught the admiration of our enemies, and secured to us the applause of the world.—We at this day feel the effects of this disposition, and now live under a government of our own choice, constructed by ourselves, upon unequivocal principles, and requires but to be well administered to make us as happy under it as generally falls to the lot of humanity. The disturbances in the course of the year past cannot be placed as an objection to the principle I advance.—They took their rise in idleness, extravagance and misinformation, a want of knowledge of our several finances, a universal delusion at the close of the war, and in consequence thereof, a pressure of embarrassments, which checked, and in many cases, destroyed that disposition of forbearance, which ought to be exercised towards each other. These were added to the accursed practice of letting money at usury, and some few real difficulties and grievances, which our late situation unavoidably brought upon us. The issue of them, however, rather proves the position for, a very few irreclaimables excepted, we find even an anxiety to hearken to reason pervading all classes—industry and frugality increasing, and the advantages arising from good, wholesome laws, confessed by every one.—Let who will gain say it, I am confident we are in a much better situation, in all respects, than we were at this period the last year; and as fast as can be expected, consistent with the passions and habits of a free people, of men who will think for themselves, coalescing, as a corre-

4.3.2

spondent observes in a late paper,[1] under a firm, wise and efficient government. The powers vested in Congress have hitherto been found inadequate.—Who are those that have been against investing them? The people of this Commonwealth have very generally supposed it expedient, and the farmer equally with the merchant have taken steps to effect it.—A Convention from the different States for that sole purpose hath been appointed of their most respectable citizens—respectable indeed I may say for their equity, for their literature, and for their love of their country.—Their proceedings are now before us for our approbation.—The eagerness with which they have been received by certain classes of our fellow citizens, naturally forces upon us this question: Are we to adopt this Government, without an examination?—Some there are, who, literally speaking, are for pressing it upon us at all events. The name of the man who but lisps a sentiment in objection to it, is to be handed to the printer, by the printer to the publick, and by the publick he is to be led to execution. They are themselves stabbing its reputation. For my part, I am a stranger to the necessity for all this haste! Is it not a subject of some small importance? Certainly it is.—Are not your lives, your liberties and properties intimately involved in it?—Certainly they are. Is it a government for a moment, a day, or a year? By no means—but for ages—Altered it may possibly be, but it is easier to correct before it is adopted.—Is it for a family, a state, or a small number of people? It is for a number no less respectable than three millions. Are the enemy at our gates, and have we not time to consider it? Certainly we have. Is it so simple in its form as to be comprehended instantly?—Every letter, if I may be allowed the expression, is an idea. Does it consist of but few additions to our present confederation, and those which have been from time to time described among us, and known to be necessary?—Far otherwise. It is a compleat system of government, and armed with every power, that a people in any circumstances ought to bestow. It is a path newly struck out, and a new set of ideas are introduced that have neither occurred or been digested.—A government for national purposes, preserving our constitution entire, hath been the only plan hitherto agitated. I do not pretend to say, but it is in theory the most unexceptionable, and in practice will be the most conducive to our happiness of any possible to be adopted:—But it ought to undergo a candid and strict examination. It is the duty of every one in the Commonwealth to communicate his sentiments to his neighbour, divested of passion, and equally so of prejudices. If they are honest and he is a real friend to his country, he will do it and embrace every opportunity to do it. If thoroughly looked into before it is adopted, the people will be more apt to approve of it in practice, and every man is a TRAITOR to himself and his posterity, who shall ratify it with his signature, without first endeavouring to understand it.—We are but yet in infancy; and we had better proceed slow than too fast.—It is much easier to dispense powers, than recall them.—The

present generation will not be drawn into any system; they are too enlightened; they have not forfeited their right to a share in government, and they ought to enjoy it.

Some are heard to say, "When we consider the men who made it, we ought to take it for sterling, and without hesitation—that they were the collected wisdom of the States, and had no object but the general good."[2]—I do not doubt all this, but facts ought not to be winked out of sight:—They were delegated from different States, and nearly equally represented, though vastly disproportionate both in wealth and numbers. They had local prejudices to combat, and in many instances, totally opposite interests to consult. Their situations, their habits, their extent, and their particular interest, varied each from the other. The gentlemen themselves acknowledge that they have been less rigid upon some points, in consequence of those difficulties than they otherwise should have been.—Others again tell you that the Convention is or will be dissolved; that we must take their proceedings in whole or reject them[3]—But this surely cannot be a reason for their speedy adoption; it rather works the other way. If evils are acknowledged in the composition, we ought, at least, to see whose shoulders are to bear the most; to compare ours with those of other States, and take care that we are not saddled with more than our proportion: That the citizens of Philadelphia are running mad after it, can be no argument for us to do the like:—Their situation is almost contrasted with ours; they suppose themselves a central State; they expect the perpetual residence of Congress, which of itself alone will ensure their aggrandizement: We, on the contrary, are sure to be near one of the extremes; neither the loaves or fishes will be so plenty with us, or shall we be so handy to procure them. 4.3.3

We are told by some people, that upon the adopting this New Government, we are to become every thing in a moment:—Our foreign and domestic debts will be as a feather; our ports will be crowded with the ships of all the world, soliciting our commerce and our produce: Our manufactures will increase and multiply; and, in short, if we STAND STILL, our country, notwithstanding, will be like the blessed Canaan, a land flowing with milk and honey. Let us not deceive ourselves; the only excellency of any government is in exact proportion to the administration of it:[4]—Idleness and luxury will be as much a bane as ever; our passions will be equally at war with us then as now; and if we have men among us trying with all their ability to undermine our present Constitution, these very persons will direct their force to sap the vitals of the new one.— 4.3.4

Upon the whole, my fellow countrymen, I am as much a federal man as any person: In a federal union lies our political salvation—To preserve that union, and make it respectable to foreign opticks, the National Government ought to be armed with all necessary powers; but the subject I conceive of infinite delicacy, and requires both ability and reflection. In discussing 4.3.5

points of such moment, America has nothing to do with passions or hard words; every citizen has an undoubted right to examine for himself, neither ought he to be ill treated and abused, because he does not think at the same moment exactly as we do. It is true, that many of us have but our liberties to lose, but they are dearly bought, and are not the least precious in estimation:—In the mean time, is it not of infinite consequence, that we pursue inflexibly that path, which I feel persuaded we are now approaching, wherein we shall discourage all foreign importations; shall see the necessity of greater oeconomy and industry; shall smile upon the husbandman, and reward the industrious mechanick; shall promote the growth of our own country, and wear the produce of our own farms; and, finally, shall support measures in proportion to their honesty and wisdom, without any respect to men. Nothing more is wanted to make us happy at home, and respectable abroad.

John DeWitt.

II

To the Free Citizens of the Commonwealth of Massachusetts.

4.3.6 In my last address upon the proceedings of the Foederal Convention, I endeavored to convince you of the importance of the subject, that it required a cool, dispassionate examination, and a thorough investigation, previous to its adoption—that it was not a mere revision and amendment of our first Confederation, but a compleat System for the future government of the United States, and I may now add in preference to, and in exclusion of, all others heretofore adopted.—It is not TEMPORARY, but in its nature, PERPETUAL.—It is not designed that you shall be annually called, either to revise, correct, or renew it; but, that your posterity shall grow up under, and be governed by it, as well as ourselves.—It is not so capable of alterations as you would at the first reading suppose; and I venture to assert, it never can be, unless by force of arms. The fifth article in the proceedings, it is true, expressly provides for an alteration under certain conditions, whenever "it shall be ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by Congress."—Notwithstanding which, such are the *"heterogeneous materials from which this System was formed,"*[5] such is the difference of interest, different manners, and different local prejudices, in the different parts of the United States, that to obtain that majority of three fourths to any one single alteration, essentially affecting this or any other State, amounts to an absolute impossibility. The conduct of

the Delegates in dissolving the Convention, plainly speaks this language, and no other.—Their sentiments in their Letter to his Excellency the President of Congress are—That this Constitution was the result of a spirit of amity—that the parties came together disposed to concede as much as possible each to the other—that mutual concessions and compromises did, in fact, take place, and all those which could, consistent with the peculiarity of their political situation.[6] Their dissolusion enforces the same sentiment, by confining you to the alternative of taking or refusing their doings in the gross. In this view, who is there to be found among us, who can seriously assert, that this Constitution, after ratification and being practised upon, will be so easy of alteration? Where is the probability that a future Convention, in any future day, will be found possessed of a greater spirit of amity and mutual concession than the present? Where is the probability that three fourths of the States in that Convention, or three fourths of the Legislatures of the different States, whose interests differ scarcely in nothing short of every thing, will be so very ready or willing materially to change any part of this System, which shall be to the emolument of an individual State only? No, my fellow-citizens, as you are now obliged to take it in the whole, so you must hereafter administer it in whole, without the prospect of change, unless by again reverting to a state of Nature, which will be ever opposed with success by those who approve of the Government in being.

That the want of a Bill of Rights to accompany this proposed System, is a 4·3·7
solid objection to it, provided there is nothing exceptionable in the System itself, I do not assert.—If, however, there is at any time, a propriety in having one, it would not have been amiss here.[7] A people, entering into society, surrender such a part of their natural rights, as shall be necessary for the existence of that society. They are so precious in themselves, that they would never be parted with, did not the preservation of the remainder require it. They are entrusted in the hands of those, who are very willing to receive them, who are naturally fond of exercising of them, and whose passions are always striving to make a bad use of them.—They are conveyed by a written compact, expressing those which are given up, and the mode in which those reserved shall be secured. Language is so easy of explanation, and so difficult is it by words to convey exact ideas, that the party to be governed cannot be too explicit. The line cannot be drawn with too much precision and accuracy. The necessity of this accuracy and this precision encreases in proportion to the greatness of the sacrifice and the numbers who make it.—That a Constitution for the United States does not require a Bill of Rights, when it is considered, that a Constitution for an individual State would, I cannot conceive.—The difference between them is only in the numbers of the parties concerned; they are both a compact between the Governors and Governed, the letter of which must be adhered to in discussing their powers. That which is not expressly granted, is of course retained.

4.3.8 The Compact itself is a recital upon paper of that proportion of the subject's natural rights, intended to be parted with, for the benefit of adverting to it in case of dispute. Miserable indeed would be the situation of those individual States who have not prefixed to their Constitutions a Bill of Rights, if, as a very respectable, learned Gentleman at the Southward observes, "the People, when they established the powers of legislation under their separate Governments, invested their Representatives with every right and authority which they did not, in explicit terms, reserve; and therefore upon every question, respecting the jurisdiction of the House of Assembly, if the Frame of Government is silent, the jurisdiction is efficient and complete."[8] In other words, those powers which the people by their Constitutions expressly give them, they enjoy by positive grant, and those remaining ones, which they never meant to give them, and which the Constitutions say nothing about, they enjoy by tacit implication, so that by one means and by the other, they became possessed of the whole.—This doctrine is but poorly calculated for the meridian of America, where the nature of compact, the mode of construing them, and the principles upon which society is founded, are so accurately known and universally diffused. That insatiable thirst for unconditional controul over our fellow-creatures, and the facility of sounds to convey essentially different ideas, produced the first Bill of Rights ever prefixed to a Frame of Government. The people, altho' fully sensible that they reserved every tittle of power they did not expressly grant away, yet afraid that the words made use of, to express those rights so granted might convey more than they originally intended, they chose at the same moment to express in different language those rights which the agreement did not include, and which they never designed to part with, endeavoring thereby to prevent any cause for future altercation and the intrusion into society of that doctrine of tacit implication which has been the favorite theme of every tyrant from the origin of all governments to the present day.[9]

4.3.9 The proceedings of the Convention are now handed to you by your Legislature, and the second Wednesday in January is appointed for your final answer. To enable you to give that with propriety; that your future reflections may produce peace, however opposed the present issue of your present conduct may be to your present expectations, you must determine, that, in order to support with dignity the Foederal Union, it is proper and fit, that the present Confederation shall be annihilated:—That the future Congress of the United States shall be armed with the powers of Legislation, Judgment and Execution:—That annual elections in this Congress shall not be known, and the most powerful body, the Senate, in which a due proportion of representation is not preserved, and in which the smallest State has equal weight with the largest, be the longest in duration:—That it is not necessary for the public good, that persons habituated to the exercise of power should ever be reminded from whence they derive it, by a return to

the station of private citizens, but that they shall at all times at the expiration of the term for which they were elected to an office, be capable of immediate re-election to that same office:—That you will hereafter risque the probability of having the Chief Executive Branch chosen from among you; and that it is wholly indifferent, both to you and your children after you, whether this future Government shall be administered within the territories of your own State, or at the distance of four thousand miles from them.—You must also determine, that they shall have the exclusive power of imposts and the duties on imports and exports, the power of laying excises and other duties, and the additional power of laying internal taxes upon your lands, your goods, your chattels, as well as your persons at their sovereign pleasure:—That the produce of these several funds shall be appropriated to the use of the United States, and collected by their own officers, armed with a military force, if a civil aid should not prove sufficient:—That the power of organizing, arming and disciplining the militia shall be lodged in them, and this thro' fear that they shall not be sufficiently attentive to keeping so respectable a body of men as the yeomanry of this Commonwealth, compleatly armed, organized and disciplined; they shall have also the power of raising, supporting and establishing a standing army in time of peace in your several towns, and I see not why in your several houses:—That should an insurrection or an invasion, however small, take place, in Georgia, the extremity of the Continent, it is highly expedient they should have the power of suspending the writ of Habeas Corpus in Massachusetts, and as long as they shall judge the public safety requires it:—You must also say, that your present Supreme Judicial Court shall be an Inferior Court to a Continental Court, which is to be inferior to the Supreme Court of the United States:—That from an undue biass which they are supposed to have for the citizens of their own States, they shall not be competent to determine title to your real estate, disputes which may arise upon a protested Bill of Exchange, a simple note of hand, or book debt, wherein your citizens shall be unfortunately involved with disputes of such or any other kind, with citizens either of other States or foreign States: In all such cases they shall have a right to carry their causes to the Supreme Court of the United States, whether for delay only or vexation; however distant from the place of your abode, or inconsistent with your circumstances:—That such appeals shall be extended to matters of fact as well as law, and a trial of the cause by jury you shall not have a right to insist upon.—In short, my fellow-citizens, previous to a capacity of giving a compleat answer to these proceedings, you must determine that the Constitution of your Commonwealth, which is instructive, beautiful and consistent in practice, which has been justly admired in Europe, as a model of perfection, and which the present Convention have affected to imitate, a Constitution which is especially calculated for your territory, and is made conformable to your genius, your habits, the mode of holding your estates, and your particular interests, shall be reduced in its

powers to those of a City Corporation:—The skeleton of it may remain, but its vital principle shall be transferred to the new Government: Nay, you must go still further, and agree to invest the new Congress with powers, which you have yet thought proper to withhold from your own present Government.—All these, and more, which are contained in the proceedings of the Foederal Convention, may be highly proper and necessary.—In this overturn of all individual Governments, in this new-fashioned set of ideas, and in this total dereliction of those sentiments which animated us in 1775, the Political Salvation of the United States may be very deeply interested, but BE CAUTIOUS.

John DeWitt.

III

To the Free Citizens of the Commonwealth of Massachusetts.

4.3.10 Civil liberty, in all countries, hath been promoted by a free discussion of publick measures, and the conduct of publick men. The FREEDOM OF THE PRESS hath, in consequence thereof, been esteemed one of its safe guards. That freedom gives the right, at all times, to every citizen to lay his sentiments, in a decent manner, before the people. If he will take that trouble upon himself, whether they are in point or not, his countrymen are obliged to him for so doing; for, at least, they lead to an examination of the subject upon which he writes.—If any possible situation makes it a duty, it is our present important one, for in the course of sixty or ninety days you are to approve of or reject the present proceedings of your Convention, which, if established, will certainly effect, in a greater or less degree, during the remainder of your lives, those privileges which you esteem dear to you, and not improbably those of your children for succeeding ages. Now therefore is unquestionably the proper time to examine it, and see if it really is what, upon paper, it appears to be. If with yours eyes open, you deliberately accept it, however different it may prove in practice from what it appears in theory, you will have nobody to blame but yourselves; and what is infinitely worse, as I have before endeavoured to observe to you, you will be wholly without a remedy. It has many zealous advocates, and they have attempted, at least as far as their modesty would permit, to monopolize our gazettes, with their encomiums upon it. With the people they have to manage, I would hint to them, their zeal is not their best weapon, and exertions of such a kind, artful attempts to seize the moment, do seldom tend either to elucidate

and explain principles, or ensure success. Such conduct ought to be an additional stimulous for those persons who are not its professed admirers, to speak their sentiments with freedom however unpopular.—Such conduct ought to inspire caution, for as a man is invariably known by his company, so is the tendency of principles known by their advocates—Nay, it ought to lead you to enquire who are its advocates? Whether ambitious men throughout America, waiting with impatience to make it a stepping stone to posts of honour and emolument, are not of this class? Whether men who openly profess to be tired of republican governments, and sick to the heart of republican measures; who daily ridicule a government of choice, and pray ardently for one of force, are not of the same class? And, whether there are not men among us, who disapprove of it only because it is not an absolute monarchy, but who, upon the whole, are among its advocates?—In such examinations as these, you cannot mispend a proportion of the sixty days.

All contracts are to be construed according to the meaning of the parties 4.3.11
at the time of making them. By which is meant, that mutual communications shall take place, and each shall explain to the other their ideas of the contract before them.—If any unfair practices are made use of, if its real tendency is concealed by either party, or any advantage taken in the execution of it, it is in itself fraudulent and may be avoided. There is no difference in the constitution of government—Consent it is allowed is the spring—The form is the mode in which the people choose to direct their affairs, and the magistrates are but trustees to put that mode in force.—It will not be denied, that this people, of any under Heaven, have a right of living under a government of their own choosing.—That government, originally consented to, which is in practice, what it purports to be in theory, is a government of choice; on the contrary, that which is essentially different in practice, from its appearance in theory, however it may be in letter a government of choice, it never can be so in spirit. Of this latter kind appear to me to be the proceedings of the Foederal Convention—They are presented as a Frame of Government purely Republican, and perfectly consistent with the individual governments in the Union. It is declared to be constructed for national purposes only, and not calculated to interfere with domestic concerns. You are told, that the rights of the people are very amply secured, and when the wheels of it are put in motion, it will wear a milder aspect than its present one. Whereas the very contrary of all this doctrine appears to be true. Upon an attentive examination you can pronounce it nothing less, than a government which in a few years, will degenerate to a compleat Aristocracy, armed with powers unnecessary in any case to bestow, and which in its vortex swallows up every other Government upon the Continent. In short, my fellow-citizens, it can be said to be nothing less than a hasty stride to Universal Empire in this Western World, flattering, very flattering to young ambitious minds, but fatal to the liberties of the people. The cord is strained

to the very utmost.—There is every spice of the SIC. JUBEO possible in the composition. Your consent is requested, because it is essential to the introduction of it; after having received-confirmation, your complaints may encrease the whistling of the wind, and they will be equally regarded.

4.3.12 It cannot be doubted at this day by any men of common sense, that there is a charm in politicks. That persons who enter reluctantly into office become habituated, grow fond of it, and are loath to resign it.—They feel themselves flattered and elevated, and are apt to forget their constituents, until the time returns that they again feel the want of them.—They uniformly exercise all the powers granted to them, and ninety-nine in a hundred are for grasping at more. It is this passionate thirst for power, which has produced different branches to exercise different departments and mutual checks upon those branches. The aristocratical hath ever been found to have the most influence, and the people in most countries have been particularly attentive in providing checks against it. Let us see if it is the case here.—A President, a Senate, and a House of Representatives are proposed. The Judicial Department is at present out of the question, being separated excepting in impeachments. The Legislative is divided between the People who are the Democratical, and the Senate who are the Aristocratical part, and the Executive between the same Senate and the President who represents the Monarchical Branch.—In the construction of this System, their interests are put in opposite scales. If they are exactly balanced, the Government will remain perfect; if there is a prepondency, it will finally prevail. After the first four years, each Senator will hold his seat for the term of six years. This length of time will be amply sufficient of itself to remove any checks that he may have upon his independency, from the fear of a future election. He will consider that it is a serious portion of his life after the age of thirty; that places of honour and trust are not generally obtained unsolicited. The same means that placed him there may be again made use of; his influence and his abilities arising from his opportunities, will, during the whole term encrease those means; he will have a compleat negative upon all laws that shall be general, or that shall favor individuals, and a voice in the appointment of all officers in the United States.—Thus habituated to power, and living in the daily practice of granting favors and receiving solicitations, he may hold himself compleatly independent of the people, and at the same time ensure his election. If there remains even a risque, the blessed assistance of a little well-distributed money, will remove it.

4.3.13 With respect to the Executive, the Senate excepting in nomination, have a negative upon the President, and if we but a moment attend to their situation and to his, and to the power of persuasion over the human mind, especially when employed in behalf of friends and favorites, we cannot hesitate to say, that he will be infinitely less apt to disoblige them, than they to refuse him. It is far easier for twenty to gain over one, than one twenty; besides, in the one

case, we can ascertain where the denial comes from, and the other we cannot. It is also highly improbable but some of the members, perhaps a major part, will hold their seats during their lives. We see it daily in our own Government, and we see it in every Government we are acquainted with, however many the cautions, and however frequent the elections.

These considerations, added to their share above mentioned in the Executive department must give them a decided superiority over the House of Representatives.—But that superiority is greatly enhanced, when we consider the difference of time for which they are chosen. They will have become adepts in the mystery of administration, while the House of Representatives may be composed perhaps two thirds of members, just entering into office, little used to the course of business, and totally unacquainted with the means made use of to accomplish it.—Very possible also in a country where they are total strangers.—But, my fellow-citizens, the important question here arises, who are this House of Representatives? "A representative Assembly, says the celebrated Mr. Adams, is the sense of the people, and the perfection of the portrait, consists in the likeness."[10]—Can this Assembly be said to contain the sense of the people?—Do they resemble the people in any one single feature?—Do you represent your wants, your grievances, your wishes, in person? If that is impracticable, have you a right to send one of your townsmen for that purpose?—Have you a right to send one from your county? Have you a right to send more than one for every thirty thousand of you? Can he be presumed knowing to your different, peculiar situations—your abilities to pay publick taxes, when they ought to be abated, and when encreased? Or is there any possibility of giving him information? All these questions must be answered in the negative. But how are these men to be chosen? Is there any other way than by dividing the State into districts? May not you as well at once invest your annual Assemblies with the power of choosing them—where is the essential difference? The nature of the thing will admit of none. Nay, you give them the power to prescribe the mode. They may invest it in themselves.—If you choose them yourselves, you must take them upon credit, and elect those persons you know only by common fame. Even this privilege is denied you annually, through fear that you might withhold the shadow of controul over them. In this view of the System, let me sincerely ask you, where is the people in this House of Representatives?—Where is the boasted popular part of this much admired System?—Are they not couzin germans in every sense to the Senate? May they not with propriety be termed an Assistant Aristocratical Branch, who will be infinitely more inclined to co-operate and compromise with each other, than to be the careful guardians of the rights of their constituents? Who is there among you would not start at being told, that instead of your present House of Representatives, consisting of members chosen from every town, your future Houses were to consist of but ten

4.3.14

in number, and these to be chosen by districts?—What man among you would betray his country and approve of it? And yet how infinitely preferable to the plan proposed?—In the one case the elections would be annual, the persons elected would reside in the center of you, their interests would be yours, they would be subject to your immediate controul, and nobody to consult in their deliberations—But in the other, they are chosen for double the time, during which, however well disposed, they become strangers to the very people choosing them, they reside at a distance from you, you have no controul over them, you cannot observe their conduct, and they have to consult and finally be guided by twelve other States, whose interests are, in all material points, directly opposed to yours. Let me again ask you, What citizen is there in the Commonwealth of Massachusetts, that would deliberately consent laying aside the mode proposed, that the several Senates of the several States, should be the popular Branch, and together, form one National House of Representatives?—And yet one moment's attention will evince to you, that this blessed proposed Representation of the People, this apparent faithful Mirror, this striking Likeness, is to be still further refined, and more Aristocratical four times told.—Where now is the exact balance which has been so diligently attended to? Where lies the security of the people? What assurances have they that either their taxes will not be exacted but in the greatest emergencies, and then sparingly, or that standing armies will be raised and supported for the very plausible purpose only of cantoning them upon their frontiers? There is but one answer to these questions.—They have none. Nor was it intended by the makers they should have, for meaning to make a different use of the latter, they never will be at a loss for ways and means to expend the former. They do not design to beg a second time. Knowing the danger of frequent applications to the people, they ask for the whole at once, and are now by their conduct, teazing and absolutely haunting of you into a compliance.[11]—If you choose all these things should take place, by all means gratify them. Go, and establish this Government, which is unanimously confessed imperfect, yet incapable of alteration. Intrust it to men, subject to the same unbounded passions and infirmities as yourselves, possessed with an insatiable thirst for power, and many of them, carrying in them vices, tho' tinsel'd and concealed, yet, in themselves, not less dangerous than those more naked and exposed. But in the mean time, add an additional weight to the stone that now covers the remains of the Great WARREN and MONTGOMERY;[12] prepare an apology for the blood and treasure, profusely spent to obtain those rights which you now so tamely part with. Conceal yourselves from the ridicule of your enemies, and bring your New-England spirits to a level with the contempt of mankind. Henceforth you may sit yourselves down with propriety, and say, Blessed are they that never expect, for they shall not be disappointed.

John DeWitt.

IV

To the Free Citizens of the Commonwealth of Massachusetts.

Place the Frame of Government proposed, in the most favorable point of view, magnify the priviledges held forth to the people to their fullest extent, and enlarge as much as you please, upon the great checks therein provided, notwithstanding all which, there cannot remain a doubt in the mind of any reflecting man, that it is a System purely Aristocratical, calculated to find employment for men of ambition, and to furnish means of sporting with the sacred principles of human nature. The great object throughout, is the acquisition of property and power, and every possible opportunity has been embraced to make ample provision for supplying a redundancy of the one, to exercise the other in its fullest extent. They have engrossed to themselves the riches of America, and are carefully silent what use they intend to put them to. Powers are there granted, that shall give to persons, greater strangers, and perhaps greater enemies to you than the people of Great-Britain, the right of entry into your habitations without your consent, not a lisp being mentioned as to the mode or time when such powers shall be exercised. They have taken to themselves the Purse and Sword of your country. 4.3.15

Like the performance of a fine painter, the Senate is the subject of the piece painted.—The people with their priviledges, to an attentive observer, may be seen in the back ground, composing an insignificant part of the drapery, but their existence depends upon the freshness of the colours.—Frequent handling, a little exposure, and the smallest inroads of time upon these shades, will soon destroy them, and they will no longer be considered a part of the composition. If this is true—if in any future period, however distant, we are to be governed by One Branch, it surely behoves us to provide for an equal voice in that Branch, that our respective influence shall bear some small proportion to our respective contributions and numbers: Whereas in this System, equality is totally disregarded. Five pounds in the Senate has an equal voice with fifty, and about five hundred thousand of the inhabitants the same number of votes with the remaining three millions. Where then is the probability the rights of the people will find equal security? Is it not demonstrable that your burthens will be great in proportion as your influence in that body that imposes them is small? As it respects this Commonwealth, infinitely better would be our situation in a representation in the British Parliament. The terms offered us by our enemies to place us as we stood in 1763,[13] bear no comparison in their consequences, to those which would flow from the exercise of the powers of this Government by the Senate, as now constructed. If the same proportion in numbers and property had been observed in this Branch as in the House of Representatives (and no reason why it was not hath yet appeared, excepting what the celebrated 4.3.16

Southern gentleman is pleased to term a "*necessary compromise between contending interests*["]][14] however successful they might be hereafter in arrogating all the powers of government to themselves, or however severe in executing them, still one gleam of hope with the spirit of consolation would be found in the breast of the subject, that his grievances were proportionate to those of his neighbours; but in the present case, even this satisfaction is denied him—the uncertainty is not left him—his reason instanter convinces him it is not so.

4.3.17 It is idle to expect more virtue in an American than in an individual of any other nation.—That in opposition to all other countries, we are disposed in this, to live peaceably with each other, to consult our neighbours[']] interest equally with our own, and to do to others as we should wish they should do to us. This being the case, we should not want any government.—Human nature is the same in all parts of the world, bad is the best:[15] Education and example may tend to check or promote good or bad qualities, and encourage different degrees of vice. Some passions are more encreased by exercise in some countries than in others; but in all, the original stock is the same. We see in America the same vices, as abroad, and we are not backward in the practice of both wit and ingenuity in cultivating them. The pleasure of controul is palatable to all mankind without a single exception from the cradle to the throne. Let our peculiar situations be what they may, our proportion of happiness great, our domestic circles pleasing, our love of money unbounded, without a moment of suspence, still we are ready to risque the sacrifice of them all for a share in the exercise of power over our fellow creatures,—for the sake of governing others, instead of being governed ourselves; and the more we examine the conduct of those men who have been intrusted with the administration of governments, the more assured we shall be in our position, that mankind have perhaps in every instance abused the authority vested in them, or attempted the abuse of it. In considering the present Government before us, we therefore certainly ought to look upon those who are to put it in motion, as our enemies—to be careful what we give—to see what use it is to be put to—and where to resort for a remedy, if it is abused.—Every door unguardedly left open, they will take care we never shall hereafter shut—every link in the chain unrevitted, they will provide shall always remain so.—It is of the last importance we set out right, we never can return to our present situation so well prepared to set out again.

4.3.18 This institution once established will not wear wholly out for thousands of years.—It will not be easy for any single State to alter it by force of arms.—To guard against such attempts, will claim the earliest attention of our new Governours.

4.3.19 To you, my fellow-citizens, let me now appeal: To you, who do not expect immediately to taste the sweets that flow from unlimited power, who determine upon principles that are immutable, who are not warped by pri-

vate interest, and do not see through different mediums on different days—is there any among you who have had leisure to examine this Frame of Government, and without taking into consideration the powers granted therein, can say he approves of it—that he is pleased with the organization of the different branches, in their balances and their checks, that the people are fully and adequately represented, and let Human Nature be as depraved as Hell itself, (and we all know it is) yet the means provided to keep it within bounds are ample for the purposes?—I trust there is not one so passively disposed.—Indeed there cannot be, for it is grossly deficient in all these properties, it fails in a balance, and in a due seperation of the different departments—it totally fails in a fair, faithful, honest image of the people, and in an equality of representation, in the only powerful branch in it.—I feel a confidence that the good sense of the people of this Commonwealth, will secure a proper decision upon so important a subject. I feel animated, when I reflect, in what precious estimation they have held their liberties, from the settlement of their country to the present hour—with what ardour they have encountered distress, poverty and death, to preserve and secure them, and with what caution they have parted with even that proportion, which is necessary for the assistance of good order and society.—I go on further to contend, that though its frame was the best ever proposed to a people for their acceptance, and would last properly balanced for ages, yet powers are there given, more than are either fit or necessary in any case to be parted with.

The extent of our country, with all its striking features, while they conspire to promote a foederal union, are totally inconsistant with the plan of one Universal Empire, involving in it the destruction of the different State Governments.—I appeal to the most flaming zealots for the new Constitution, whether one of them, until the disclosure of the proceedings, entertained an idea, that the Convention would assume the power of internal taxation.—I dare affirm it was not lisped by an individual, throughout the whole Continent. Among all the conversations respecting the sending of members to that Convention; even the claim over the excises was not started.—It was on the contrary, a point universally conceded, that had the impost been vested in Congress by the States at the time proposed, with powers to collect it, there never would have been an occasion for a Convention. That foederal measures would have taken a favourable turn, and with the proceeds of that revenue, Congress would have been able to have supported her own household, paid the interest of her domestic debt, and the different instalments, and interest of her foreign. But now these same Gentlemen, despising every civil institution yet adopted in America, and finding the form of Government far more grateful to their ambitious spirits than they ever imagined, will tell you, that the existance of the Continent depends upon its adoption—that we are ruined and undone, if we do not cordially embrace it, but if we do, like the ingenious dentist, it will pull from the

4.3.20

breast of every citizen, all his jarring, malevolent passions, making us a wise, virtuous and wealthy people, and though they do not in plain words say that the millennium is to commence on its birth day; yet they describe to you, all the blessed effects expectant upon such an aera.

4.3.21 A dry tax is at all times odious.[16] It is not congenial to the feelings of a free people. It is a visible demand upon a man at noon day, of that which he prefers to his life. He is called upon, when the necessity of giving it to support the society he lives in, does not strike him so forceably;—he for ever parts with it with reluctance, and would never consent, but under a conviction, that it is absolutely necessary—that it is his proportion—that it will be properly applied, and is laid upon him by his neighbour, chosen by himself, whom he controuls, and who bears an equal share of the same burthen.—It is a science difficult in its nature, duly to assess it. A man must not only be knowing to the different circumstances of every individual, the value of his real and personal estate—but also must be without passions, without prejudices, without connections, making it his whole business. This not being the case, produces heart burnings, evasions, false oaths, unequal assessments, delays of payment, and finally, inability. These inconveniences are still increased by the mode of collecting the tax when so assessed. This trust is placed, in general, in persons who have neither knowledge or discretion equal to the importance of it. An opportunity is put into their hands to gratify all their little prejudices and resentments. They will unreasonably press upon one, and at the same moment indulge another. Unused to handle large sums of money, they cannot help fingering untill they think it their own—They missapply first a small proportion, one extravagance leads to another, until they are in arrears when called upon—and the honest and industrious are obliged again to contribute to supply their deficiencies.—This is the operation of a dry tax in its best situation; and it serves to demonstrate, that taxation and representation are inseperable—that they never can be laid upon the subject but by himself, or his representative, not treble refined, but resident in his vicinity, who shall be conversant both in his ability as to quantum, and propriety as to time. Even then they ought not be resorted to, but in the last extremity, for surely this Commonwealth will not be backward to testify, that notwithstanding they have made the experiment under the most promising circumstances, still woeful experience demonstrates the utter impossibility of raising and collecting monies sufficient for the use of government in such an odious, unequal manner. The five taxes past, in their consequences, have introduced idleness, dissipation, fraud, discontent, bankruptcies, unlawful speculations, stock-jobbing, and every other vice incident to our species, without supplying the Treasury with scarce a farthing.[17] Government have always demonstrated a disposition to ease the people in the payment as much as in their power, notwithstanding which no one single person is satisfied, Gov-

ernment itself almost destroyed in consequence, and the end proposed in no one shape answered. If then, my fellow citizens, it is so easily demonstrated that dry taxes are attended with such fatal consequences, when we impose them ourselves, that the evils accompanying the collection of them in the best given circumstances, over-balance all the advantages accruing from the monies raised by such collections.—What reason have you to suppose that a Continental tax will be more beneficial in its consequences, more equal in its assessments, and milder in its mode of collection. A man must be distracted to suppose so, for there are no avenues open for either of those consequences to flow through. In the first instance, the sum will be laid upon you by people that cannot be sufficiently acquainted with your country. A new set of Continental pensioned Assessors will be introduced into your towns, whose interest will be distinct from yours.—They will be joined by another set of Continental Collectors, still less principled and less adequate than the former. Attempts will be made by interested men upon their integrity, and instances of their deviations will be daily before your eyes.—At a distance from their employers and removed from the Seat of Government, you will see them exulting with ideas, that they can practice their oppression upon you with impunity, and in their rioting and debauchery they will squander the proceeds of your industry.—The extremes of tyranny are commonly at the extreme parts of the country governed. You must kiss the rod, or they will make you feel it.—According to the spirit of obedience which you manifest; to the ease with which you part with your money, so will the mode of assessing and collecting it be varied from time to time by your new masters. If one man shall not be competent, he shall be attended with an host.—Whether that host shall be the posse of your country or a file of armed soliders, shall depend upon circumstances. They are to determine, and you are to make no laws inconsistent with such determination, whether such Collectors shall carry with them any paper, purporting their commission, or not—whether it shall be a general warrant, or a special one—whether written or printed—whether any of your goods, or your persons shall be exempt from distress, and in what manner either you or your property is to be treated when taken in consequence of such warrants. They will have the liberty of entering your houses by night as well as by day for such purposes.—All these points are given in letter and in spirit to the New Constitution, and the subject has not a shadow of security that they will not be executed.—Nay, if they ever should mean to exercise the right of taxation at all, I affirm it can be done with success by them in no other way, but in an arbitrary manner, and by previously subduing the spirit and strength of this Commonwealth.

In forming our own Constitution, by persons having one common interest, we deemed it of consequence, to preface such powers, with the mode in which they should be exercised.—We thought it highly proper to declare 4.3.22

"That every subject had a right to be secured from all unreasonable searches and seizures of his person, his houses, his papers, and all his possessions—that all warrants were contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation, and if the order in the warrant to a civil officer, be not accompanied with a special designation," &c.[18] &c. &c.—These checks are omitted, however, in the present proceedings, and the sole reason why appears to be this, that the makers of them know the power itself to be improper, that the people would always be convinced of that impropriety, and would never submit, so long as they could resist.—That of course it must be collected without these checks, or not collected at all.

4.3.23 These are serious thoughts.—They may by some be called bugbears; but they will be verified in the future history of America, with a vengeance.—That it will be in five, ten or fifteen years is not probable. Your rulers will be too knowing, to be over hasty in a display of their strength; they will not loose ground so easily as the Court of Great-Britain did for want of a little well timed policy.—Your chains will be gradual, and gilded. But finally they will be as visible as the Summer's Sun in the Meridian. Where is the Government under Heaven, where every farthing is not taken from the people, that they possibly can part with.—It must be the case here. Their interest will point out to them the policy in accustoming you to contributions, and their curiosity will be early excited to make the experiment to constitute a thermometer for your feelings.—They will have a plausible pretext.—They will tell you your burthens will be less when you get out of debt, and that they are the effect of not adopting it sooner.—They have large demands upon them, and matters of moment to undertake. The officers of their Government will be encreased an hundred fold, and the liberality with which they have expended their money in salaries plainly evinces the improbability that there ever will be a great sum lying idle in their treasury.

John DeWitt.

(*To be continued.*)

V[19]

To the Free Citizens of the Commonwealth of Massachusetts.

4.3.24 The chief blessings of society, like individuals, are fond of association, and have a mutual dependence upon each other. They form links of one chain, and are all actuated by the same cause. Where freedom prevails, industry

and science there also prevail. Industry produces wealth, and science preserves freedom in purity. The majority of the people in all such countries become so active in their different pursuits, that they are deprived both of their time and opportunity to inform themselves of the principles of the government by which those great blessings are secured to them, and almost implicitly rely both for the explaining and for the enforcing of those principles upon the patriotism of those, their fellow-citizens, who labour but in the field of enquiry, and who spend their whole time in researches after knowledge. Thanks be to Heaven, that in America, that majority always retaining the power, the others have never dared to enforce their principles, without previous explanation, and it has become natural to mankind, wherever they have a system of any kind, a favorite, if it is as genuine and honest in principle, as in appearance, they leave no active powers of the mind unessayed, in elucidating, explaining and enlarging upon its benefits to those whom they wish should adopt it—all its good qualities are delineated, and every exertion is made to refute all objections offered against it, which exertions will be crowned with success, if the objections in themselves are futile, and will not bear the force of light and argument.

The malevolent passions of the heart are not called in, private faults of individuals are not raked from oblivion and magnified, invidious representations are not made, neither are the slanderous, envenomed darts of malice and envy hurled against those characters, who yesterday were deemed praiseworthy and held sacred for a series of obligations conferred by them upon their country, but to day are execrated with passion, because they do not in all points see as other men see. On the contrary, cool reasoning and dispassionate argument, are of themselves sufficient to build up such a system, to unravel all its mysteries, and to present to the people in expressive, legible colours, the blessings that will result from its adoption. Where this mode of conduct is not pursued by its advocates, where instead of cool reasoning upon the subject in question, artful evasions are presented, the system itself is winked out of sight, instead of dispassionate endeavours to remove difficulties arising in honest minds, which are offered with decency to the public in order to be refuted, those who make them are loaded with the opprobrious terms of *Insurgents, destroyers of all government, bankrupts, defaulters,* and *anti-federalists,* which is worse than *jacobitism:* Where, instead of promoting free discussions upon the most important subject ever before a community, attempts are made to fetter and suppress such discussions, by THREATENING the Printer and DROPPING the papers that contain them: Where, instead of coming forward like men, in the full exercise of reason, like fellow-citizens warmed with a patriotick ardour for their country, emulous to secure and preserve its sacred principles, and with proper weapons disarming their fellow-citizens of those objections, they blast and asperse their characters (the dernier resort of all supporters of a bad cause) I say the people have a fair, undoubted right to presume those

4.3.25

objections unanswerable, the system itself essentially defective, and that its advocates are, by their conduct, endeavouring not to reason, but to surprize the people into a hasty approbation of it.—

4.3.26 That this is the case with the supporters of the proceedings of the Foederal Convention, far be it from me to declare.—Judge, my fellow-citizens, for yourselves—examine the public prints from the promulgation of this Constitution. Objections there you will find in score—are they offered with decency? Do they attack men or measures? Are they answered in the same manner? And do you discover a desire in those who wish you to embrace this Government, to inform you of its principles, and the consequences which will probably ensue from such principles—why they have taken from you the sinews of your present government, and instead of revising and amending your Confederation; have handed you a new one, contrasted in the plenitude of its powers.—As you answer these questions, so you must make up your opinion upon that which is before you.

4.3.27 They have the power of "organizing, arming and disciplining the militia, and of governing them when in service of the United States, giving to the separate States the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress." Let us enquire, why they have assumed this power, for if it is for the purpose of forming you into one uniform, solid body throughout the United States, making you respectable both at home and abroad—of arming you more compleatly and exercising you oftener—of strengthening the power which is now lodged in your hands, and relying upon you and you solely for aid and support to the civil power in the execution of all the laws of the New Congress, it certainly can be no where better placed under the restrictions therein mentioned, than in that body. But is this probable. Does the complection of the proceedings countenance such a supposition? When they unprecedently claim the power of raising and supporting standing armies, do they tell you for what purposes they are to be raised?—How they are to be employed?—How many they are to consist of, and where to be stationed?—Is this power fettered with any one of these necessary restrictions which will shew they depend upon the militia, and not upon this infernal engine of oppression to execute their civil laws. The nature of the demand in itself contradicts such a supposition, and forces you to believe that it is for none of these causes—but rather for the purpose of consolidating and finally destroying your strength, as your respective Governments are to be destroyed.

4.3.28 They well know the impolicy of putting or keeping arms in the hands of a nervous people, at a distance from the Seat of Government, upon whom they mean to exercise the powers granted in that Government.—They have no idea of calling upon the party aggrieved to support and enforce their own grievances. They are aware of the necessity of catching Samson asleep to trim him of his locks. It is asserted by the most respectable writers upon

Government, that a well regulated militia, composed of the yeomanry of the country have ever been considered as the bulwark of a free people; and, says the celebrated Mr. HUME, "without it, it is folly to think any free government will have stability or security—When the sword is introduced, as in our constitution (speaking of the British) the person entrusted will always neglect to discipline the militia, in order to have a pretext for keeping up a standing army; and it is evident this is a mortal distemper in the British parliament, of which it must finally inevitably perish."[20]—If they have not the same design, why do they wish a standing army unrestrained? It is universally agreed, that a militia and a standing body of troops never yet flourished in the same soil. Tyrants have uniformly depended upon the latter, at the expence of the former. Experience has taught them, that a standing body of regular forces, where ever they can be compleatly introduced, are always efficacious in enforcing their edicts, however arbitrary, and slaves by profession themselves, are "nothing loath" to break down the barriers of freedom with a *gout*.—No, my fellow-citizens, this plainly shews they do not mean to depend upon the citizens of the States alone to enforce their powers, wherefore it is their policy to neglect them, and lean upon something more substantial and summary. It is true, they have left the appointment of officers in the breast of the several States; but this to me, appears an insult, rather than a priveledge, for what avails this right, if they in their pleasure should choose to neglect to arm, organize and discipline the men over whom such Officers are to be appointed. It is a bait, that you might be led to suppose they did intend to apply to them in all cases, and to pay particular attention to making them the bulwark of this Continent.—And would they not be equal to such an undertaking?—Are they not abundantly able to give security and stability to your government as long as it is free? Are they not the only proper persons to do it? Are they not the most respectable body of yeomanry in that character upon earth? Have they not been deeply engaged in some of the most brilliant actions in America, and more than once decided the fate of armies? In short, do they not preclude the necessity of any standing army whatsoever, unless in case of invasion; and in that case it would be time enough to raise them, for no free government under Heaven, with a well disciplined militia was ever yet subdued by mercenary troups.[21]

The advocates at the present day, for a standing army in the New Con- 4.3.29
gress pretend it is necessary for the respectability of government. I defy them to produce an instance in any country, in the Old or New World, where they have not finally done away the liberties of the people:—Every writer upon government,—Lock, Sidney, Hamden, and a list of others have uniformly asserted, that standing armies are a solecism in any government; that no nation ever supported them, that did not resort to, rely on, and finally become a prey to them.—No Western Historians have yet been hardy enough to advance principles that look a different way. What histo-

rians have asserted, all the Grecian Republicks have verified.—They are brought up to obedience and unconditional submission.—With arms in their hands, they are taught to feel the weight of rigid discipline:—They are excluded from the enjoyments which liberty gives to its votaries, they, in consequence, hate and envy the rest of the community in which they are placed, and indulge a malignant pleasure in destroying those privileges to which they never can be admitted.—"Without them, says the Marquis of Beccaria, in every society there is an effort constantly tending to confer on one part the height of power, and to reduce the other to the extreme of weakness and misery, and this is of itself sufficient to employ the people's attention."[22] There is no instance of any government being reduced to a confirmed tyranny without military oppression; and the first policy of tyrants has been to annihilate all other means of national activity and defence, and to rely solely upon standing troops.—Repeated were the trials before the Sovereigns of Europe dared to introduce them upon any pretext whatever; and the whole record of the transactions of mankind cannot furnish an instance (unless the proceedings of the Convention may now be called a part of that record) where the motives which caused their establishment, were not completely disguised.—Pisistratus in Greece, and Dyonysius in Syracuse, Charles in France, and Henry in England, all cloaked their villainous intentions under an idea of raising a small body for a guard to their persons; and Spain, could not succeed in the same nefarious plan, until through the influence of the ambitious Priest, they were called upon to resist the progress of the Infidels. "Caesar, who first attacked the commonwealth with *mines*, very soon opened his *batteries*."[23]—Notwithstanding all these objections to this engine of oppression, which are made by the most experienced men, and confirmed by every country, where the rays of freedom ever extended.—Yet in America, which has hitherto been her favorite abode—in this civilized territory, where property is valuable, and men are found with feelings that will not patiently submit to arbitrary controul—in this Western region, where, my fellow-countrymen, it is confessedly proper that you should associate and dwell in society from choice and reflection, and not be kept together by force and fear, you are modestly requested to engraft into the component parts of your Constitution , a STANDING ARMY, without any qualifying restraints whatever,—certainly to exist somewhere within the bowels of your country in time of peace. It is very true, that the celebrated Mr. Wilson, a member of the Convention, and who we may suppose breathes, in some measure, the spirit of that body, tells you, it is for the purpose of forming cantonments upon your frontiers, and for the dignity and safety of your country, as it respects foreign nations.[24] No man that loves his country could object to their being raised for the first of these causes, but for the last it cannot be necessary. GOD has so separated us by an extensive ocean from the rest of mankind, he hath so liberally endowed us with privileges, and so abundantly taught us to esteem them precious, it

would be impossible, while we retain our integrity and advert to first principles, for any nation whatever to subdue us. We have succeeded in an opposition to the most powerful people upon the globe; and the wound that America received in the struggle, where is it? As speedily healed as the track in the ocean is buried by the succeeding wave. It has scarcely stopped her progress, and our private dissentions only at this moment, tarnish the lustre of the most illustrious infant nation under Heaven.

4.3.30 You cannot help suspecting this gentleman, when he goes on to tell you, "that standing armies in time of peace, have always been a topic of *popular declamation*, but Europe hath found them necessary to maintain the appearance of strength in a season of the most profound tranquility."[25]—This shews you his opinion, and that he as one of the Convention, was for unequivocally establishing them in time of peace; and to object to them is mere popular declamation. But I will not, my countrymen, I cannot believe you to be of the same sentiment. Where is the standing army in the world, that, like the musquet they make use of, hath been, in time of peace, brightned and burnished for the sake only of maintaining an appearance of strength, without being put to a different use, without having had a pernicious influence upon the morals, the habits, and the sentiments of society, and finally, taking a chief part in executing its laws. But some say, that there is a controul over them, and that consists in the appropriation of monies for their support. Turn your attention to England, and see the popular part of this constitution by the influence of money, by the influence of military and revenue officers, brought gravely to give their annual assent to the existence of a standing army, and for monies to support it. It has long since been an insult on the good sense of that nation.

4.3.31 It may not be amiss to remind you of that swarm of revenue, excise, impost and stamp officers, Continental assessors and collectors, that your new Constitution will introduce among you. They will, of themselves, be a STANDING ARMY to you, and you will see them at your elections, active and industrious to secure the seats of those men who put them into office:—They will be very adequate to give you a surfeit of their company, to make you tired in meddling with government, and disposed to become indifferent about the exercise of it, without the blessed assistance of any military corps.—

4.3.32 Upon the whole, my countrymen, it appears to me, that this power as it now stands, is decidedly improper and dangerous. That Congress ought to have the power of raising armies when invaded by our enemies, is certain; that they ought not to have it for any other cause, is equally so. If they did not or do not mean to employ them in any other way, they ought in express terms to say so, in a Bill of Rights. They never ought to exist at all, but in subordination to civil authority. If the people are not in general disposed to execute the powers of government, it is time to suspect there is something wrong in that government, and rather than employ a standing army, they

had better have another; for, in my humble opinion, it is yet much too early to set it down for a fact, that mankind cannot be governed, but by force.

John De Witt.

1. This piece has not been found. For references to Federalist and Anti-Federalist discussions of the circumstances of the country in the 1780s, see Centinel IV, 2.7.91 n. 43; Federal Farmer I, 2.8.1 n. 4; Plebeian 6.11.5 n. 6.

2. See Federal Republican 3.6.5 n. 4.

3. See Centinel XI, 2.7.140 n. 74.

4. See Federal Farmer I, 2.8.1 n. 3; Candidus 4.9.18 n. 6; Poplicola, 4.11.1 n. 1.

5. James Wilson, "Address to the Citizens of Philadelphia," 6 October 1787, McMaster and Stone 146.

6. Farrand II, 666–67 (17 September).

7. See Mason 2.2.1 n. 1.

8. James Wilson, "Address," 6 October 1787, McMaster and Stone 145. See Federal Farmer IV, 2.8.50 n. 39.

9. See Agrippa VI, 4.6.23 n. 14.

10. John Adams, *Defence* I, preface (*Works* IV, 284). For other Anti-Federalist discussions of representation see Federal Farmer II, 2.8.15 n. 11.

11. *The Federalist* no. 49, and DeWitt V, 4.3.25.

12. Revolutionary figures killed in battle in 1775, the former at Bunker Hill, the latter at Quebec.

13. See Bernard Bailyn, *Ideological Origins of the American Revolution* (Cambridge, Mass. 1967) 227–28.

14. James Wilson, "Address," 6 October 1787, McMaster and Stone 146.

15. The similarity here to the views of human nature expressed by Publius is striking. Cf. *The Federalist* nos. 6, 7, and 51. See Smith 6.12.34 n. 32.

16. Dry taxes are taxes on polls and estates. See James Sullivan to R. King, 28 September 1787 *The Life and Correspondence of Rufus King* I, 260.

17. See Jensen, *New Nation*, 307–9.

18. Massachusetts Constitution, 1780, Part I, Art. XIV.

19. A large portion of this essay (from 4.3.26 to the end) was reprinted anonymously in the *New York Journal* 28 January 1788.

20. David Hume, "Idea of a Perfect Commonwealth," *Essays, Moral, Political and Literary*.

21. According to Publius, "This doctrine in substance had like to have Lost us our independence. . . . The steady operations of war against a regular and disciplined army, can only be successfully conducted by a force of the same kind. . . . War, like most other things, is a science to be acquired and perfected by diligence, by perserverance, by time, and by practice." *The Federalist* no. 25, 161–62; on standing armies and militia, see generally nos. 24–29, and Brutus VIII, 2.9.97 nn. 66 and 67.

22. Beccaria begins *An Essay on Crimes and Punishments:* "In every human society, there is an effort continually tending to confer on one part the height of power and happiness, and to reduce the other to extreme of weakness, and misery. The intent of good laws is to oppose this effort, and to diffuse their influence, universally, and equally." There is no reference here to standing armies, and it appears that the New England writer has misunderstood Beccaria's argument. See Beccaria, *An Essay on Crimes and Punishments* (Philadelphia 1819), Introduction. On the editions of Beccaria's *Essay*, see Federal Farmer VII, 2.8.97 n. 61.

23. The source of this quotation has not been found.

24. James Wilson, "Address to the Citizens of Philadelphia," 6 October 1787, McMaster and Stone, 145–46.

25. Ibid.

Essays by Vox Populi

MASSACHUSETTS GAZETTE
October–November 1787

Vox Populi provides a rather good statement of the very widespread Anti-Federal objection to the power of Congress to make or alter regulations fixing the times, places, and manner of holding elections (4.4.2–8). He also discusses at length and with a good deal of competence the alleged incompatibility between the constitution of Massachusetts, including the oath its officers are required to give, and the proposed federal Constitution (4.4.26–40). Other subjects treated are the basis of civil society in jealousy and distrust of other men (4.4.16), the significance of past neglect and violations of the Articles of Confederation (4.4.18–19), the possibility of adoption of the new Constitution by a very small number (4.4.14, 20), the undesirability of curtailing the states' rights to secure new forms of taxation (4.4.21), and the absence of a bill of rights (6.6.22–24). The author was, according to one of his critics, a member of the Massachusetts legislature.[1]

1. Cassius, Ford, *Essays* 18. Replies by Cassius and Examiner appeared in the *Massachusetts Gazette* during the following weeks. The former are printed in Ford, *Essays* 11–19.

I

As the proposed Federal Constitution is now before the impartial publick, 4.4.1
for their approbation or disallowance, I conceive it to be the *duty*, as well as the PRIVILEGE of each and every citizen of this commonwealth to investigate the matter fully, and ripen his mind for a suitable answer to the important question; and when he has thus furnished his own judgment, I conceive he has, at *least*, a right to hold up his sentiments to publick view, and throw all the light he is capable of before the publick; and in case of any doubt in his own mind with regard to said Constitution, or any part thereof, he may undoubtedly worth [throw?] such doubts before the publick, that they may be publickly taken up and obviated.

4.4.2 These things premised, I beg leave to lay before the candid publick the first clause in the fourth section of the first article of the proposed Constitution.—

"*The times, places and manner of holding elections, for senators and representatives, shall be prescribed in each state by the legislature thereof; but the* Congress *may, at any time, by law, make or alter such regulations—except as to the places of choosing senators.*"

By this clause, the *time, place* and *manner* of choosing representatives is *wholly* at the disposal of Congress.

4.4.3 Why the Convention, who formed the proposed Constitution, wished to invest Congress with such a power, I am by no means capable of saying; or why the good people of this commonwealth should delegate such a power to them, is no less hard to determine.—But as the subject is open for discussion, I shall make a little free inquiry into the matter.

And, first. What national advantage is there to be acquired by giving them such a power?

The only advantage which I have heard proposed by it is, to prevent a partial representation of the several states in Congress; "for if the time, manner and place were left wholly in the hands of the state legislatures, it is probable they would not make provision by appointing time, manner and place for election; in which case there *could* be no election, and consequently the federal government weakened."[1]

4.4.4 But *this* provision is by no means sufficient to prevent an evil of *that* nature; for will any reasonable man suppose, that when the legislature of any state, who are annually chosen, are so corrupt as to break thro' *that* government which they have formed, and refuse to appoint time, place and manner of choosing representatives—I say, can any person suppose, that a state, so corrupt, would not be full as likely to neglect, or even refuse, to choose representatives at the time and place and in the manner prescribed by Congress? Surely they would.—So it could answer no good national purpose on *that* account; and I have not heard any other national advantage proposed thereby.

4.4.5 We will now proceed, in the next place, to consider *why* the people of this commonwealth should vest Congress with such a power.—

No one proposes that it would be any advantage to the people of this state; therefore, it must be considered as a matter of indifference, except there is an opportunity for its operating to *their* disadvantage: in which case, I conceive it ought to be disapprobated.

4.4.6 Whether there is danger of its operating to the good people's disadvantage, shall now be the subject of our inquiry.—

Supposing Congress should direct, that the representatives of this commonwealth should be chosen all in one town, (Boston, for instance) on the first day of March—would not that be a very injurious institution to the good people of this commonwealth?—Would not there be at least nine-tenths of

the landed interest of this commonwealth intirely unrepresented? Surely one may reasonably imagine there would. What, then, would be the case if Congress should think proper to direct, that the elections should be held at the north-west, south-west or north-east part of the state, the last day of March? How many electors would there attend the business?—And it is a little remarkable, that any gentleman should suppose, that Congress could possibly be in any measure as good judges of the time, place and manner of elections as the legislatures of the several respective states.

These as objections I could wish to see obviated:—And I could wish the publick inquiry might extend to a consideration, whether or no it would not be more conducive, to prevent a partial representation, to invest Congress with power to levy such a fine as they might think proper on states not choosing representatives, than by giving them this power of appointing time, manner and place. 4.4.7

It is objected by some, that Congress could not levy, or, at least, could not *collect*, such a fine of a delinquent state. If *that* is the case, Congress could not collect any tax they might think proper to levy, nor execute any order whatever; but at any time any state might break through the national compact, dissolve the federal constitution, and set the whole structure afloat on the ocean of chaos. 4.4.8

It is, therefore, proposed to the publick to consider, whether the said clause in the fourth section of the first article can answer the only purposes for which it is said to have been provided, or any other which will prove any advantage either to the nation or state.

Vox Populi.

Boston, Oct. 29.

II

A Card.

Mr. *Vox Populi* presents his most respectful compliments to mr. *Examiner*,[2] returns him thanks for the *attention* he has paid his piece on the Constitution—is obliged to him for the candour he has discovered on the occasion, but is under the disagreeable necessity of informing him, that he apprehends he has done nothing towards obviating the doubts and scruples with which his mind was agitated with regard to the *proposed* Constitution. 4.4.9

Mr. *Examiner* was wholly right when he asserts *Vox Populi's* objections to the Constitution were founded on *jealousy* and *distrust;* for all *doubts, scruples* or *objections* against any *form* of government *whatever,* MUST, *in the nature of things*, be founded in *jealousy* and *distrust,* and NOTHING else. 4.4.10

Mr. *Examiner* doubtless imagined, that the introducing the reprobated

words, *jealousy* and *distrust,* would be fully sufficient to *silence* all *Vox Populi's* doubts, but he will be convinced to the *contrary* when he considers that *jealousy* and *distrust* are by no means so heinous things as some may imagine, for all governments in existence (however great *blessings* they are) *originated entirely* from *jealousy* and *distrust,* as did also all *deeds, bonds, receipts, notes, etc. etc. etc.*

And all Mr. *Examiner* has said on this subject, will apply with equal force against all the governments established in the world, and even against the *jealous* and *distrustful* practice of taking deeds, bonds, notes, etc.

4.4.11 Mr. *Examiner* proceeds rather to ridicule *Vox Populi's* scruples with regard to the proposed Constitution, by giving an instance where more *danger* lay, than in the article objected to by *Vox Populi:* but can he imagine *that* can be any reason why the constitution should be adopted?

4.4.12 *Vox Populi* had other objections against the Constitution, but he thought it was best to lay *one* before the publick at first and see how that would be obviated, and when he considers mr. Examiner's *abilities* as well as his inclination, he concludes it is not in his power (and consequently not in the power of any other) to do it.

4.4.13 Had Mr. Examiner obviated *Vox Populi's* objections against the aforesaid article, he would have proceeded to have asked Mr. Examiner's opinion with regard to the propriety or impropriety of nine states establishing a government on the *ruins* of the articles of confederation, which were made in Congress, and after nearly three years examination, were ratified and confirmed by every state; in which it is stipulated and agreed by each state with the whole, and by the whole with each state, that said articles of confederation "*shall be* inviolably *observed by* EVERY STATE; *and the* union *shall be* PERPETUAL, *nor shall any* alteration *at any time hereafter be made in any of them, unless such alteration be agreed to in a* CONGRESS *of the United States, and be afterwards confirmed by the legislature of* every state."[3] He would have asked Mr. Examiner, whether it is possible for any number of states *less* than the whole contracting number, to make any, the least alteration in said federal system, without being involved in the guilt of an open and avowed violation of a sacred federal constitution, *a total want of publick faith and destitution of national honour?* Whether a government founded expressly on the principles and idea of unanimity *can* be dissolved or materially altered by any number of the contracting parties short of the whole? And whether if any thing of that nature is carried into effect by any of the contracting parties, it can be considered in any other point of light than that of a revolt (not to say *rebellion*) against the national Constitution?

Monday morning.

4.4.14 N. B. Is it not possible that the proposed Constitution may be adopted as a system of federal government according to the proposals of the Convention

and have only 706,359 people in favour of it, and 2,346,340 people against it, or in that proportion?

Mr. Allen,

In your paper of this day, I find a piece signed *Examiner,* in which the writer makes a number of remarks on a *Card* which I did myself the honour to hand him, through the medium of your paper, of last Tuesday.[4] 4.4.15

How far his observations fall short of obviating the difficulties proposed in Card, is *cheerfully* submitted to the good sense of your readers, rather than undertake to be judge in that matter myself; but he will doubtless excuse me in making a few observations on his production, and lay them before the candid publick.

He is pleased to call government's originating *from* jealousy and distrust,* "A NEW IDEA;" but I shall challenge mr. Examiner to point out any other principle which could induce a *rational* person to make himself subject to civil government. If I was not *jealous* that some person would injure me in some way, what could I have to induce me to give up my *natural* liberty, and part with part of my natural rights? If I did not *distrust* the rectitude of my fellow-creatures' future conduct towards me, what advantage could I ever expect to reap from a system of jurisprudence? Are not all the advantages which a person can expect to derive from entering into a state of civil government (or at least all he ought to expect) of a negative nature? Are they not all comprehended in this one general idea, *a prevention of injuries from others?*—I think it is perfectly consistent with the most *finished* diffidence to answer in the affirmative. If that is the case, what kind of necessity, or even propriety, could there be in any person's making himself a subject of a civil government if he was not *jealous* somebody would injure him? 4.4.16

I next find him informing the world that I *assert,* "that no alteration can be made in the national government without the consent of all the states, because the confederation forbids it." Out of regard to the gentleman's nerves I shall forbear asking the Examiner to *quote* the passage, and shall content myself with proposing for his consideration this simple question—Is there no specifick difference between a quere and an assertion? 4.4.17

Mr. Examiner then proceeds to evince the contrary, and his argument therefor is full as *new* as my idea of the origination of government was.[5] It is needless to inform the publick, that, because the continental constitution has in some instances not been adhered to, therefore it ceases to be a crime to violate it—and implicitly charges all such as do not agree with him in this *logical* conclusion, with a destitution of *common sense.* If it would not be 4.4.18

*I make use of the word *from,* as that was the word in the *Card,* though mr. Examiner has thought proper to barter it away for the word *in.*—Perhaps he thought they were synonimous.

disagreeable to the *Examiner's* feelings I would just mention, that this ratiocination of his, puts me in mind of a certain clergyman who in company (by way of joke) asked an *Indian woman,* who was present bottoming chairs—"*How many commandments are there?*" "NINE," answered the old squaw. "Not but *nine!*" said the minister. "*No,* (rejoined the old native) *there was ten, but you and me broke one to pieces 'tother night, you know, so there is but* nine *left.*"

4.4.19 In order to set this matter in a just point of light, I will bring an instance, which will forcibly apply in this case. There is in this commonwealth a statute law against *murder*—Suppose that A. should, with *malice propense,* kill B.—is taken up for the crime—is committed to prison—is indicted by the grand inquest—is brought to the bar—the jury impanelled—the indictment is read—the attorney-general arranges the evidence, which is *plene* proof—opens the matter to the jury—adduces the law—and sits down—The counsel for the prisoner arises—"*May it please your honours, and you, gentlemen of the jury*—I am for the prisoner at the bar, etc.—the fact of killing I do not deny, neither do I wish to conceal that it was done with *malice propense,* but my ground of defence is very different—the law on which the indictment is founded, is obsolete, null and void; for it has been violated and broken more than one hundred times since it was enacted, and there remains no force or validity in it." The figure which such a pleader would make at the bar, mr. Examiner, *de facto,* makes on the political and logical theatre!

4.4.20 By the time mr. *Examiner* had got thro' the whole concatination of his stupendous reasoning, his *mental* powers, by some means, forgot to execute their proper functions, so far as totally to mistake, not only my *ideas,* but my *words,* also; for he tells the publick, that my "*last objection, that a small majority may choose the Congress,*" etc. whereas there was not a syllable about choosing Congress in the whole *card;* 'tis true I proposed this quere to his consideration. "*Is it not possible that the proposed constitution may be adopted as a system of federal government,* according to the proposals of the convention, *and have only* 706,359 *people in favour of it, and* 2,346,340 *against it, or in that proportion?* and I will now add, *and have every person's voice in the United States taken upon the matter?*" I proposed this question to set in a proper point of view the mode proposed by the convention for the acceptance of the constitution. I believe it is a maxim in politicks which will ever hold good, that no form of government ever ought to be accepted, unless a major part of the governed are in favour of it; and it is certain that no republican government ever can be established on any other principle; but according to the proposed plan, this federal system may be adopted by *nine* states, and the remaining *four* be unanimous against it; and at the same time these four dissenting states may be a considerable majority of the United States; and at the same time it is also possible that half the people in the approbating states, save nine, may be against it, which will

leave a majority of about 22 against seven, disapprobating the constitution; and yet (*amazing*) the constitution be established as a plan of federal government! Is this consonant to the most remote principle of a republican government?

While I am thus intruding on the indulgent patience of the publick, I beg they would forgive me in suggesting one thing to their minds, which I apprehend is closely *connected* with their welfare; I dare say they will indulge me. 4.4.21

In the course of the late war, this commonwealth has involved itself deeply in a state debt, the discharging of which is inseparably joined with every, the smallest degree of the publick faith and honour—and we find, by woful experience, that an expectation of discharging it with the proceeds of a dry tax on *polls* and *estates,* is a *baseless fabrick;* and our only hope of ever discharging it, must be founded on a *new system of taxation,* viz. a suitable impost and excise, as well on imports as other superfluities and luxurious articles: Is it not then expedient for the citizens of this state to pause a moment, and ask themselves the important question, does policy dictate that we should curtail ourselves of the right of taxing ourselves in the mode appearing most proper?—Must we be confined to a dry tax on polls and estates, when there is many of us now taxed beyond our present power to pay? When it is no strange sight to see a person taxed more than his whole estate is worth? Must we give up the right of taxing ourselves except in a certain mode which has already sunk the landed interest, the last resort of our wealth, forty *per cent.* and which if persisted in will soon sink it *ninety* if not *ninety-nine* per cent.? I think every idea of policy, *every principle of common sense,* forbids a measure so pregnant with *political perdition!* I appeal to the good sense of all rational intelligences, whether or not that an individual, who conducted his private concerns upon as uneconomical a system as this, would not be put under guardianship as *insane.* Heavens! will the good sense of the eagle-eyed citizens of Massachusetts ever permit them to divest themselves of the power of adopting their own mode of taxation! Will it ever permit them to be nearly confined to a certain mode which their own woful experience in accents not less majestick than thunder, tells them is altogether impossible to be carried into effect, without bringing inevitable destruction and the most consumate distress on a great part—yea the greater part of the community?

Vox Populi.

(*The remainder next Friday.*)

I could wish to stop here, and proceed no further, but I must renew my address to the publick's indulgence for liberty to make another address to my fellow-citizens, which is for them to consider, how it comports with 4.4.22

policy for them to establish a system of government entirely disconnected with a *bill of rights?*

I long sought for the reason why a bill of rights was omitted; at last I had the two following reasons assigned *viz.* first, *as the powers proposed to be vested in Congress were definite no bill of rights was necessary, for they could exercise no power but what is expressly given them by the constitution. The* other reason is, *because each state has a bill of rights of its own, a federal bill of rights must be wholly useless.*[6]

4.4.23 With regard to the first, it will apply with equal force to any constitution of government extant; we will take our own state's for instance, where we shall find the powers vested in the General Court are as *definite* as those proposed to be vested in Congress; yet, when the constitution was formed, it was deemed absolutely necessary that the people should be protected by an *explicit unequivocal bill of rights*, and the publick are desired to consider whether *that* was a piece of ill-judged policy or not; and if it was not, whether the *nature of things* has so changed since as to render it needless.

4.4.24 The second reason given why it was omitted, I think cannot have much greater force than the former; we may as well say, that because each state has a *constitution* of its own, that a continental constitution was unnecessary, as to say that because we have a *state* bill of rights a *continental* one is unnecessary. But let us consider what is our bill of rights, and what was its original design. If we consider its nature, we shall find it was constructed as a barricado to prevent our own General Court from infringing on certain rights which the people did not mean should be at the disposal of the legislature, and is simply a rule of conduct for our legislature. But what will Congress have to do with *our* bill of rights, any more than they will with the *rest* of our constitution? Will any person suppose that the *other parts* of our constitution will be any rule of *their* conduct? I should imagine if they do, it will curtail some part of the powers which it is meant, by the proposed constitution, they should exercise.

4.4.25 The virtuous and enlightened citizens are requested to pay that attention to this matter which the importance of its nature demands, and act thereon the part which to them shall appear becoming free men, who have hazarded their lives and fortunes to establish a government founded on the principles of genuine civil liberty and *undefiled republicanism.*

4.4.26 I cannot persuade myself to put an end to this piece without suggesting one thing more to my fellow-citizens—which is this. That whereas the proposed constitution, if it is adopted, will make material inroads in the present established constitution of this commonwealth, and rip up, and turn *topsy-turvy*, a considerable number of its constituent parts, it is highly deserving their consideration, whether such alterations can possibly, in the nature of things, be made in our constitution, in the method now proposed. In order to assist the good people in this consideration, let the following things be *carefully* attended to.

4.4.27 The constitution of the commonwealth of Massachusetts was founded on the idea of two thirds of the inhabitants approving of the same, and accepting it as a system of government; and if any number short of two thirds accepted it, it was to be *null* and void. Accordingly, it was laid before the several towns for the people's approbation or rejectment; and the number of votes, pro and con. from the several respective towns, were taken and returned to the convention, who were appointed to do that business; and on a strict examination it was found to be ratified, accepted and recognized by two thirds of the people in the state, *in all its parts,* as a constitution and frame of government for this commonwealth, and was accordingly declared to be such.—And can it possibly be a serious question in the mind of any man, whether any body of men, whatever can legally or constitutionally dissolve said constitution, or any part thereof, except it is done with the same solemnity, and with as high a power, as it was made by? or, in other words, whether any number of our citizens, less than two thirds, *can,* consistent with any system of constitutional principles, dissolve or alter the same, or any part thereof? I must imagine that such a question exists in the mind of no rational man; for it is a maxim founded in the nature of things, that a thing cannot be unmade but by that same power that created it; and 'tis also an axiom in all systems of jurisprudence, that no obligation, deed, agreement, contract or engagement, can be dissolved or altered but by an instrument of as high a nature as that which constitutes it; and no act, ordinance or decree, can be reversed but by the *same* authority that enacted, made or determined it. And we may add to these *universally uncontroverted* principles of civil policy, the express provision made *in our constitution* for its revision, where expressly the consent of two thirds is made necessary to such an event.[7]

4.4.28 Let us examine for one moment, whether the proposed plan of *amendment* (for such in the present instance it is proper to call it) involves in its nature any thing which is correspondent with the aforesaid principles of civil policy. This commonwealth contains about 340 towns, each town will undoubtedly send a delegate to the convention, who will there act the sentiments of a major part of his constituents, and the *majority* of the convention will decide on the matter, and their decision *may be* only a bare majority *of* a bare majority: so that the proposed constitution, essentially altering our state constitution, *may be* established in this state by a minority of *five* against a majority of *fourteen,* which has every feature of that worst of all governments, ARISTOCRACY.

4.4.29 Paying an impartial attention to the foregoing observations, I freely submit it to the candid publick, whether a ratification of the proposed federal constitution is not *wholly incompatible* with that allegiance which is due from each of our citizens to the commonwealth and the constitution thereof; more especially I would recommend it to the serious consideration of all in office under government, as well as all who *have been* since the inauguration

of our present constitution, how they *can reconcile their approbating* the proposed constitution, with that SOLEMN and UNEQUIVOCAL DECLARATION and OATH, which they, in the presence of God, made at their entering into office, and which is *registered in Heaven*, and *still* binding on them!

4.4.30 Let the publick reflect but a moment on the immense expense of treasure, toil, fatigue, hardship and danger, as well as blood, with which we last winter defended our *invaluable constitution*, and consider whether they will now reduce it to a *mere skeleton!* Let them further consider, that provided the alterations are made in our state constitution, which must be made in it if the proposed federal one is adopted, and if this is done only by a bare majority *of* a bare majority, I say let them consider in what respect such a revolution would differ from the *bold* and *unprovoked* one which was attempted to be made last winter!

4.4.31 But perhaps it may be asked, "if the proposals of the convention are so pregnant with mischief, how came the General Court to lay them before the publick?" I answer, the General Court acted merely officially in laying them before their constituents, according to the direction of Congress, the supreme council of the nation; and had the General Court withheld them from the community (whose servants they are) it would have been chargeable with arogating to itself the power of deciding on a question which only fell within the province of the people at large to determine upon, so that the General Court acted with the greatest propriety as well as constitutionality on the matter.

Vox Populi.

Nov. 9, 1787.

To the People of Massachusetts,

Fellow-Citizens,

4.4.32 At this all important crisis you should allow no object however great to divert your attention from the proposed system of federal government: now is its day of probation, but that day will soon expire, and you should work the work of the day while it is yet day, before the night cometh wherein no man can work; if you like the foolish virgins sleep till the midnight cry is heard, your applications after that will all prove fruitless.

4.4.33 The adoption of the proposed constitution ought not to be considered as a matter of indifference, *that* event will undoubtedly be very advantageous or injurious, and it is yours at present to investigate the matter fully, and determine on the matter according to the best judgment you are able to form on such an investigation; if you accept it you ought to be fully convinced it is for the best; if you reject you should do it from a conviction that it is not adapted to promote the publick good.

I have formerly invited your attention to the consideration of some of its parts, as well as some of the consequences which I conceived would result from its adoption; I now wish you to attend to the sixth article thereof, where you will find it is provided, *That the federal constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States shall be the* supreme law of the land, *and the* judges *in every state shall be* bound thereby, *any thing in the constitution or laws of any state to the* contrary *notwithstanding.—And the* members *of the several* state legislatures *and* all judicial and executive officers, *both of the United States and of the several states shall be bound by oath or affirmation to support this constitution.* 4.4.34

Here you have the *arcana* of federal blessings laid open before you. A part of the supreme law is to be such as *may be* diametrically opposed to the sentiments of every citizen of this state as well as the sentiments of your representatives and senators in the federal legislature, some of which may be made only by the president and two thirds of a *quorum* of the senate. 4.4.35

But is here not a difficulty involved in this matter which is rather hard of removal? Every officer[8] legislative, judicial or executive must be bound by oath or affirmation to support this constitution, and every such officer has taken or must take a solemn oath that he does ["]*truly and sincerely acknowledge, profess, testify and declare that the Commonwealth of Massachusetts* is, *and of right ought to be, a free sovereign and independent state,—and that he will bear true faith and allegiance to the said Commonwealth, and that he will defend the same against traiterous conspiracies and all hostile attempts whatsoever: and that no foreign prince, person, prelate, state, or potentate, hath or ought to have any jurisdiction, superiority, pre-eminence, dispensing authority or other power in any matter civil, ecclesiastical or spiritual, within this Commonwealth; except the authority and power which is or may be vested by their constituents in the Congress of the United States: and that no man, or body of men hath or can have any right to absolve or discharge him from the obligation of this oath, etc. and that he doth make this acknowledgment, etc. heartily and truly according to the common meaning and acceptation of the foregoing words, without any equivocation, mental evasion or secret reservation whatsoever.*"[9] 4.4.36

How any *honest* man can take this oath almost every word of which is *emphatical* and the same hour perhaps take the other I must confess to me is truly paradoxical: In the first of which he swears *that this Commonwealth is, and of right ought to be, a free, sovereign and independent state, and that he will bear true faith and allegiance to it, and that no man or body of men can absolve him from that obligation.* In the other he swears he will support a constitution which (it appears to me) takes away every idea of *sovereignty* which is worth retaining. How these things can be reconciled is wholly beyond my conception. 4.4.37

4.4.38 Will any one pretend to say these two oaths are compatible, because there is an exception in the state oath of such power and authority as is or may be by their constituents vested in the Congress of the United States, which exception contains every thing comprehended in the proposed constitution which the last oath binds them to support? Is it possible that any person can advance any thing like this? I cannot suppose any *rational* person can, for these two reasons, *first* the epithet *"the Congress of the United States,"* at the fabricating said oath, etc. was a definite phrase, its construction and organization were universally understood, and was known to be a body of men annually chosen, and recallable at pleasure, consisting of one branch only, and was a thing essentially different from the complex body which is to go under the name in the new proposed constitution, and we should do well to bear in mind that the oath concludes, "And I do make this declaration, etc. according to the *common meaning and acceptation of the foregoing words,* etc.[''] and I can see no help that can be obtained in this case from that proviso. But, *secondly,* if this matter was entirely got over, there would remain one which at least has the appearance of being insurmountable, for admitting the word Congress in the said oath to mean any thing and every thing which is called by that name, even then that exception could not be applied to any thing but *a Congress,* yet in the proposed constitution there is provision made for the exercise of power and authority within and concerning this commonwealth, and to which we are subject by an authority different from the Congress of the United States.

4.4.39 According to the proposed constitution, treaties are to be made by the president, with the advise of two thirds of the senate present, if there is present a quorum. The president and senate are to appoint the judges, etc. The president, in person, is a potentate, holding free and exclusive power to pardon. Viewing him in military point of light, we are all personally to be under his immediate command, and at his disposal, etc. etc. etc. All this, and more, is proposed, in the new constitution, to be authorities to which we and our state-rulers are to be subject, which is distinct from Congress; for the president, or the president and senate, cannot be Congress: for it is expressly declared and defined in the proposed constitution, that *Congress* shall consist of a senate and a house of representatives, and I cannot conceive of any other way to get clear of the difficulty, at present.

4.4.40 Paying suitable attention to these things, I leave it cheerfully with every person to judge, if any man can take and subscribe the two oaths, aforesaid, without being guilty of the most unequivocal perjury.[10]

If after a mature investigation of the subject, *that* should appear to be the case, it is left to the reflection of every one to picture in his own mind the eligibility of our circumstances, when the proposed constitution is adopted; and consider the precarious tenure by which they will all hold their lives, liberties and properties, if it is impossible for any person to be in any state

office over them, but such as are divested of the principles of honesty, and have reached the *ne plus ultra* of wickedness—*Perjury*.

These things, my fellow-citizens, are proposed for your consideration, and yours must be the consequence of the determination you make on the subject.

Vox Populi.

Boston, November 19.

1. This is probably not a quotation but a paraphrase of what Vox Populi considers to have been a typical Federalist argument. I have seen no Federalist claim that such state delinquency was probable, but many Federalists did argue that the possibility was properly guarded against in the Constitution. For major Federalist discussions of the regulation of elections for the Congress, see *The Federalist* nos. 59–61; Ford, *Essays* 30–31 (Cassius), 153 (The Landholder); Ford, *Pamphlets* 151–52 (An American Citizen), 227 (Aristides); McMaster and Stone 266 (Wilson), 272–73 (McKean). One Federalist, Noah Webster, writing as A Citizen of America, expressed disapproval of the power of Congress to alter state regulations of elections; Ford, *Pamphlets* 44. "This section cannot be too often repeated," said Centinel, and the Anti-Federalists endlessly criticized it. See Centinel I, 2.7.16; III, 27.73–74; V, 2.7.100–101; Martin 2.4.43; Cato VII, 2.6.47–48; Federal Farmer III, 2.8.25; XII, 2.8.161–65; IV, 2.9 51–54; Federal Republican 3.6.16; Pennsylvania Convention Minority 3.11.24–25; Symmes 4.5.2(3); Republican Federalist VII, 4.13.29; Friend to the Rights of the People 4.23.3(2); Republicus 5.13.14.

2. *Massachusetts Gazette* 2 November 1787. On the question of jealousy of government, see Smith 6.12.34 n. 32.

3. Art. XII.

4. This piece by Examiner appeared on 9 November 1787.

5. Examiner argued that "at this time to plead this, broken, neglected, and often violated system, to bar the adoption of a new and efficient government, appears to contradict every principle of common sense."

6. See Federal Farmer IV, 2.8.50 nn. 38, 39; Brutus II, 2.9.32 n. 23.

7. Constitution of Massachusetts, 1780, Part II, ch. VI, art. 10; Thorpe, *Federal and State Constitutions* III, 1911. Examiner replied: "A short, and I think, conclusive answer to all objections of this kind, is, that it is an established principle in all free governments, that a majority of the people have at all times a right to alter the laws or the constitution, when the welfare of the peoples shall require a change. This right should be exercised at all times with great wisdom, but if it should not, the right still remains." *Massachusetts Gazette* 20 November 1787.

8. The original reads "other."

9. Constitution of Massachusetts, 1780, Part II, ch. VI, art. 1: Thorpe, *Federal and State Constitutions* II, 1908–9.

10. Replying to this point, Cassius did not deny the incompatibility but asserted that it is irrelevant: "Can that shallow-pated scribbler suppose, that an oath, taken by rulers, to stand by a form of government adopted by the people, can be of any force or consideration, if the people choose to change that form of government for another more agreeable to their wishes?" *Massachusetts Gazette* 23 November 1787; Ford, *Essays* 17.

William Symmes

Letter to Capt. Peter Osgood, Jr.
15 November 1787

and

Speech in Massachusetts Convention
22 January 1788

Although the letter from William Symmes to Captain Peter Osgood, Jr., printed below was not, as his memorialist claims, "probably the earliest review made of the entire instrument,"[1] it is an early discussion of the Constitution, apparently uninfluenced by other men's opinion of the document. Symmes objects to the apportionment of direct taxes, which will encourage Southern luxury at the expense of the industry and economy of the North (4.5.2[1]). He objects to the discretion left to Congress in the exercise of virtually unlimited powers and to the extent of the judicial power. (4.5.2 [3–9, 12–13]). His comments on the presidency are especially keen, soberly anticipating the arguments for presidential prerogative to be made by Presidents Jackson and Lincoln (4.5.2 [10–11]). He supposes that most of the opposition will focus on the provision prohibiting states from emitting bills of credit and making tender laws, but he favors this prohibition, wishing only that it had been postponed (4.5.2 [8]). On the federal question Symmes is intriguingly ambiguous. He adds to the Anti-Federalist argument the telling points that the prohibition of interstate agreements without the consent of Congress and the guarantee of a republican form of government are inconsistent with a true federation of states (4.5.2 [9, 14]). At the same time, he objects to the provision for giving the states equal representation in the Senate (4.5.2[2]).

In his speech two months later in the Massachusetts Convention,[2] Symmes is concerned primarily with the unlimited taxing power of Congress. His arguments are noteworthy in the extent to which they attempt to meet the kind of defense of extensive national powers put forward, for example, by Publius in *The Federalist*. He reads the lesson of faction back at the Federalists (4.5.12); he explains the effects of time and precedent in extending and consolidating congressional powers (4.5.14); he exposes the weakness of the supposed restraints (4.5.15–19); and he argues the positive good of poverty, public and private (4.5.20).

Symmes was one of the delegates who was persuaded to support the Constitution in the compromise involving recommendatory amendments, and he explained his vote in a speech (not reprinted here) on 6 February 1788.[3]

1. The letter is taken from *Historical Collections of the Essex Institute* IV, no. 5 (October 1862) 211–17; the remark quoted was made by N. W. Hazen, "A Memorial Discourse on William Symmes, Esq.," delivered at Andover and North Andover in the winter of 1859–60, ibid. 198. This memorial is worth some attention on its own account as an example of thoughtful patriotic history and should be compared with the references in Impartial Examiner 5.14.22 n. 15.

2. *Debates, Resolutions, and other Proceedings of the Commonwealth of Massachusetts, Convened at Boston, on the 9th of January, 1788, and continued until the 7th of February following, for the purpose of assenting to and ratifying the Constitution recommended by the Grand Federal Convention* (Boston 1788) 97–103. The speech can also be found in the reprinting of these debates in Elliot II, 70–75 and in *Debates and Proceedings in the Convention of the Commonwealth of Massachusetts, held in the Year 1788, and which Finally Ratified the Constitution of the United States* (Boston 1856) 169–75.

3. Elliot II, 172–74; *Debates and Proceedings* (1856) 277–78; *Debates, Resolutions, and other Proceedings* (1788) 207–8. Hazen probably exaggerates when he suggests that Symmes' shift may have been sufficient to determine the outcome in Massachusetts and, therefore, in the country as a whole. Hazen, "A Memorial Discourse" 203 ff.

Letter to Capt. Peter Osgood, Jr.

Andover, Nov. 15, 1787.

Dear Sir:

According to my promise, I sit down to sketch out my reasons for objecting against ye Federal Constitution. The essay will doubtless be imperfect, but I design it for your perusal only, and I can safely rely on your goodness for all necessary allowances. 4.5.1

I will consider the objectionable passages in course as they occur in the system, as well for your convenience as my own.

1st. The apportionment of taxes. 4.5.2

It appears to me that this will operate unequally against the Northern States. Let us suppose that two-fifths of the slaves in the five Southern States amount to at least 150,000 persons. What reason can be given, why, if taxes must be proportioned by population only, these should be rejected? That the profits of their labor are nothing? I deny the fact, for I believe that every negro that cultivates the valuable staples, Tobacco, Wheat, Rice, Indigo, he raises a greater profit to his master than any white can raise from his labor here. What then? That the Southern Nabob squanders it all in luxuries, so that the States are made, if anything, poorer? Very good; The Convention, then, have patronised luxury, and taxed industry and econ-

omy. But three-fifths include all the working slaves. Neither will this answer: for the Northern States are taxed as much for one infant, or a decrepid old man, as for a vigorous youth.

How, then, shall we be taxed? I say, not in proportion to actual wealth at present, but in proportion to a state's advantage for acquiring wealth. The soil and climate of Virginia are better than those of this state. The staples of Virginia are in high demand. Its rivers, the finest in the world. How rich might Virginia be? But Virginia is not rich. What then? Shall a man need no better excuse from taxes than Idleness? He will hardly pay his *private* debts so easily.

Taxes must certainly grow out of the ground. What, then, is there, more evident than that the best land and the best produce (supposing the advantage of commerce to be equal) should pay, (or, if you please, produce,) the most? And are not our long winters, in which we consume the labors of the summer, to be considered? No, but, yes, I beg pardon,—they *are* considered; We pay the more.

But 2. The Senate.

To what purpose is it that we have an equal representation in the House, if we are represented by States in the Senate? This is a great grievance in the present Congress. That little Delaware should weigh as much in all political debates as this State, is, in a government merely popular, quite ridiculous. Whose voice are we supposed to have in all public transactions? We *accurate* Republicans say, the voice of the people. Who are the people? We answer, the majority. But a majority of States may choose a President, &c. This is a close adherence to principles. "Two Senators from each State, and each Senator to have a vote." The present Congress mended and made worse! for now seven states are completed, when before it required the sanction of nine. But we shall have a proper House,—all will be right there. True! and that may be a good reason why we should not have a proper Senate. But I cannot see the force of it. Why any state should have more weight in one body than the other, let the Convention say. And yet poor Rhode Island was not there to speak for herself. I may speak of the duration of office in another place.

3. "Congress may make and alter the times, places and manner of holding elections, except the place of choosing Senators."

This is is a very complaisant exception indeed. The legislatures may sit where they please. It means this, if it means anything. And we are doubtless much obliged to the Convention for this decent privilege. But I presume the time of choosing Senators must be in the winter, for it will be too hot for a session in the summer at the Southward. And the place of choosing representatives may possibly be the county-town, or some place yet more remote. This would be very convenient. But the word *Manner*. Oh, it is an excellent word. It would not have been half so well, to have tied the hands

of the future Congress, by saying all elections shall be made by ticket, or as the several states shall please. No, the States are to be made sensible, how much this Congress is above them in all wisdom, even to the knowledge of a particular acre of ground. Nay, the Convention itself seems dazzled by the prospect of this wisdom, for they dared not prescribe it any rules. Now that the future Congress may be as wise as this Convention, I have no great reason to doubt, from anything that's past. But they will certainly have a great deal more power, and we shall shortly hear no more of *recommendations*. That they should make use of their power, to enlarge the privileges of the people, let any expect that will. Well, then, if they do not enlarge them, why make provision for *altering* them? That they may take them away? Oh, no, never suspect such a thing. What, then, shall we think of it? That the Convention were fools? Hardly. I see no way but to recur to the great wisdom of this future Congress. It will be a wise Congress: a very wise Congress. Here now is a way to get rid of every doubt. But why need the Convention to care how the members are chosen, if they are but sent? Oh, Sir, it will be a very wise Congress. Just as good an answer as that of the clown in "All's well that ends well," which was, to everything, "Oh, Lord, Sir!"

4. "The Houses to keep a journal, and to publish the same, excepting such parts as may *in their judgment* require secresy." Good again. A very wise Congress! The idea used to be, except private articles in foreign treaties, secret expeditions, &c. But this Constitution excels in the Laconic mode of speech, or rather perhaps the Convention were lazy, and could not conveniently go about to particularize either the rights of the people or the just prerogative of Congress. Who can complain, after this, that he knows nothing of public affairs, except the expenditure of the public money? If Congress, the convention say, [judge] it is best the people should not know, and indeed, if Congress are invested with all power, general knowledge might be inconvenient, as it would only produce discontents, and these might end in rebellion.

When the dark places in these journals are inspected by some young politician of future ages, who perchance may succeed his father in the National Council, what lessons may he not learn? There may he observe by what steps the form of government is imperceptibly changed: There by what process the genius of a free people is altered. But I say no more.

5. "Congress shall have power," &c., first clause.

"To lay," pretty well, when you read what and for what,—"taxes, imports, duties and excises," very well, and for *what ends?* "to pay the debts, and provide for the common defence and general *welfare* of the United States."]

A more general dedition or surrender of all ye property in the United States to Congress could not perhaps have been framed.[1] Gentlemen, it is

all, all yours, to spend as you please, provided we may know how you spend it; and even then you may sink as many thousands as you please under the heads of incidental charges, secret services, &c. Take it all. I will paraphrase the whole of this passage in a short address from the States to Congress:

Gentlemen, Having chosen you to govern us, and believing that through all ages you will be a disinterested body, and will always spend money, if you can get it, with rigid economy, we give you full power to tax us.—And lest we should some of us prove refractory in the matter of payment, from some mistaken notion that you demand it too fast, we also give you full power to collect the taxes you lay, in the way most agreeable to yourselves; and we will pay all your collectors, deputies, and so forth, as you shall direct. And as you have power to contract debts for us to pay, you shall have all the money you want to pay them, and you shall have all you want to build forts, magazines, and arsenals; buy arms and ammunition; make war and peace, &c., and in short whatever you shall think will be in any degree for our good, you shall have money to do, and we will never trouble you with any enquiries into the motives of your conduct, always relying on your wisdom, with the most implicit confidence, and submitting our estates entirely to your disposal.

A very handsome donation! and when compared with the clause that throws all imposts and excises into the Continental treasury, produces a query how each state shall support its own government. By a dry tax, and one perhaps which cannot be collected, because the Federal Collectors must have the preference. So we must expect to be rid of State government as an expensive and useless thing; and then perhaps Congress will help us to a Federal Intendant, to save us the trouble of governing ourselves. But this may be more than my text will justify.

6. "To raise and support armies," &c.

That the Federal Head should have power to raise an army for some purposes, is perhaps quite necessary. Whether it is or not, the present Congress have such power. But here appears to be a fault, by no means singular, in this constitution, viz., the want of limitation. All is left to the discretion of Congress, and there is no bar against a standing army in time of peace. For though no appropriation of money to this use may be for a longer term than two years, yet this is long enough when the same appropriation may be continued for two years to the end of time. And we are to expect that this Congress will soon have such a system of policy as will bind their successors, either by the force of its obvious expediency, or by the danger of innovation, to persist in the same plan.

7. To exercise exclusive jurisdiction, &c.

I do not see so much of the terrible in this as some do, especially if the rest is granted. Congress will be secure from *little* mobs, and so it ought to be. It

will be delivered from the persecution of the State in which it resides, and so it ought to be. It may build accommodations for a court, which will be, as it ought to be, the property of the United States. And that a body so powerful ought to be handsomely lodged, I believe every foreigner will imagine. But how this clause came into the constitution I know not. I believe any state might grant what is here demanded, if the whole, to Congress, or any body corporate by consent of Congress.

8. "No state shall emit bills of credit, or make tender laws."

Here I suppose the principal weight of opposition will hang. The point itself is of consequence, but it will receive more from the prejudices of men in our *present embarrassed situation*. You know my sentiments are directly opposed to paper money, as they would be in almost every case in which we could want it. But the query is, whether every state shall be in a worse situation than any individual, who, if he has not the cash in hand, may give his promissory note? I think it ought not to be, unless the United States will promise to lend us money whenever we want it. But I should agree to this, that no bills of credit shall ever be a tender. This requisition would be not only just, but comformable to my notions of sound policy.

As to other tender laws, they are, in fact, but poor expedients, and such as a state may possibly need. It is really better to have some kind of tender law, than to be thrown into confusion. And a State is so much a better judge of its own circumstances, that I had rather see this regulation in the State than in the Federal constitution. Yet, unless it were in all, some States might impose upon others, and so justice would not be equally and universally done. I wish that the abolition of these abuses might be deferred, until we are in a more prosperous situation. I had rather that Congress should have power to say hereafter, when they shall cease, than that they should have leave immediately upon the adoption of any new system.

I omit the next sentence, because I don't at present understand what effect it will have on the private debt of each particular State.

9. "No State shall, without the consent of Congress, "enter into any compact or agreement with any other State."

If I understand this, it is a curious passage. What, may we not even *agree* together? If there be a suit in the Federal Court between two States, may they not, like private parties, agree? Or in a hundred other cases, of no Federal concern, may they not treat and settle their disputes? I must have mistaken these wise men. It cannot be so. To accuse the convention of folly would be gross. I dare say, that most of them had rather be accused of design.

10. The President may, with the advice of two-thirds of the Senate, who are present, make treaties, and with consent of the Senate, appoint embassadors," &c.

The Senate. Who are the Senate? Look back and you will see that a

majority is a quorum. This is fourteen, and two-thirds of fourteen are ten. The President and the Senators may make treaties; and the President and Senate by the same rule, i.e., eight Senators may appoint ambassadors, ministers, consuls, judges, and almost everybody else.

Where in God's name did they get this? From reason or from history? I fear, not from the former; and as to the latter, it has not come within my reading in any constitution where a republican form is *guarantied.* Are we then a commonwealth, and shall we have no voice in treaties? but our own President, or elected King? In four years' time (with good hope of another election,) cannot he pack a sufficient force to enable him to gratify his favorites, or sell his country? If this be not a servile adherence to the pattern of the King's privy Council of Great Britain, I confess I know not what is. Congress may declare war, indeed, but the President may make peace upon what terms he shall think proper. Is a peace of less consequence to a nation than war? Or is it ye more safe that this power should be given to one man? What is the privilege of declaring war compared with the power of making all kinds of treaties? If he make a bad treaty, what then? Why, he may be impeached, if anybody dares impeach him, before the very Senate that advised the measure. And if convicted, what? He shall be removed from his office, and perhaps disqualified to hold any other. And after this he may chance to lose his head by a trial at law, if the Judges, whom he has appointed, will bid the jury to convict him. And so, with a great deal of difficulty, for some (perhaps) irreparable detriment, we get the offender's head. Is there no better way than this? But I must not dwell longer.

11. "The President shall take care that the law be faithfully executed."

That there must be an Executive power, independent of the legislature, appears to have been generally agreed among the fabricators of modern constitutions. But I believe it has not until now been supposed essential that this power should be vested in a single person. The execution of the law requires as much prudence as any other department, and the pardoning or refusing to pardon offences, is a very delicate matter. Yet he has no council or assistant, no restraint.

But was ever a commission so *brief,* so *general,* as this of our President? Can we exactly say how far a faithful execution of the laws may extend? or what may be called or comprehended in a faithful execution? If the President be guilty of a misdemeanor, will he not take care to have this excuse? And should it turn against him, may he not plead a mistake! or is he bound to understand the laws, or their operation? Should a Federal law happen to be as generally expressed as the President's authority; must he not interpret the Act! For in many cases he must execute the laws independent of any judicial decision. And should the legislature direct the mode of executing the laws, or any particular law, is he obliged to comply, if he does not think it will amount to a faithful execution? For to suppose that the legislature can make laws to affect the office of President, is to destroy his independence,

and in this case to supersede the very constitution. Is there no instance in which he may reject the sense of the legislature, and establish his own, and so far, would he not be to all intents and purposes absolute?

12. "The Judicial Power, &c., shall extend to all cases between citizens of different States."

This seems a hardship on account of the appeal, which will carry men 600 miles, and cause them more expense than the matter in dispute may be worth. There is no reason why citizens of different States should not have as good a remedy against each other, as citizens of the same State, nor why a debtor in one state should have more cost than a debtor in the other. And supposing, that, to avoid cost, the appeal in this case should be taken away, (though by his constitution it cannot.) Yet this would be very unequal. I think this part of the judicial power not only grievous, but quite unnecessary; for disputes between inhabitants of different States have been hitherto very well determined in one of the States. And now all remedy for small dues is taken away in effect, for though judgment be obtained in the Superior Court, the debtor by appealing may discourage the creditor from any further pursuit.

13. "The Supreme Court shall have an appellate jurisdiction both as to law and fact, except," &c.

Except what? Here they are at it again! "with such exceptions and under such regulations as *Congress* shall make." A very wise Congress! This Convention have really saved themselves a great deal of labor by this presumption. I confess upon the principle, that there cannot be a fair trial before judges chosen by the State in which one of the parties resides, juries must also be excluded. But I deny the principle as too great a refinement. A Federal jury in the Supreme Court, but especially one from the vicinity, would be a chimera, if the court be stationary. But that the same men should be judges of the law and the fact, is against reason, and not congenial to a free government. Congress may make as many exceptions as they please. But to talk of regulating men's judgment of facts, would be to talk nonsense.

14. "The United States shall guarrantee to every State a Republican form of government."

Republics are either aristocratical or democratical: and the United States guarranty one of these forms to every State. But I disapprove of any guarranty in the matter. For though it is improbable, that any State will choose to alter the form of its government; yet it ought to be the privelege of every State to do as it will in this affair. If this regulation be admitted, it will be difficult to effect any important changes in State government. For the other States will have nearly as much to do with our government as we ourselves. And what Congress may see in our present constitution, or any future amendments, not strictly republican *in their opinions,* who can tell? Besides it is of no importance to any State how the government of any other State is administered, whether by a single magistrate or two, or by a king.

I therefore presume, that, as this clause meddles too much with the independence of the several States, so also it answers no valuable end to any or to the whole.

4.5.3 With regard to the Constitution taken into one view: It is a complete system of Federal government, every part of which is full of energy, and if it be established, I think it can never fail of being obeyed by the people; and no combination can ever be sufficiently extensive or secret to subvert it. There is some ambiguity in several important parts of it, which arises principally from the too general terms in which it is expressed. Too much is left perhaps for the future Congress to supply, which when supplied will be no part of the constitution. The States are strictly confined to their own business, and even these are not a little circumscribed. And the powers of all the Federal departments are very ample and adequate to their ends. In short, the system would make us formidable abroad, and keep us very *peaceable* at home, and, with some amendments, might do very well for us, if we would be contented to become citizens of America, and confuse the thirteen stripes, and change the stars into one glorious sun.[2]

Let us pause.

4.5.4 It is not in a few light strictures,—it is not, perhaps, in the most acute and methodical essay that the merits of this unexpected, this wonderful system, can be strictly defined. Reading cannot be applied, and experience is out of the question. Thus how much we may easily perceive, it is a great, almost a total, and probably a final change, with regard to every State. "To be, or not to be, that is the question." So great a revolution was never before proposed to a people for their consent. In a time of profound peace, that a matter of such infinite concern should be submitted to general debate throughout such an empire as this, is a phenomenon entirely new. Let us make a due return to that Providence by which we enjoy the privelege, by using it, like a wise, prudent and free people. Let us equally shun a hasty acceptance or a precipitate rejection of this all-important scheme. And if our final decision be the effect of true wisdom, let us never doubt but the end will be happy.

4.5.5 To close:

You must easily see, Sir, that what I have written is but a light sweep on the surface of things. Many things *in* the Constitution worthy of remark, I have wholly omitted; those I have mentioned, I have slightly criticised, and what is *not in* the Constitution that ought to be there, I have not attempted to say. I found you had prescribed me a task which few men, perhaps, can adequately perform, and that I had not by any means qualified myself to do it. But if this trifling attention to your wishes should prove a gratification, I shall be satisfied in that respect.

I am, Dear Sir,
Your Friend
& most ob't Serv't,
W. Symmes.

Capt. Peter Osgood, Jr.

Mr. President, in such an assembly as this and on a subject, that puzzles the oldest politicians, a young man, sir, will scarcely dare to *think* for himself; but if he venture to *speak*, the effort must certainly be greater. This Convention is the first representative body in which I have been honoured with a seat, and men will not wonder that a scene at once so new, and so august, should confuse, oppress, and almost disqualify me to proceed. 4.5.6

Sir, I wish to bespeak the candour of the Convention—that candour which I know, I need but ask to have it extended to me, while I make a few indigested observations on the paragraph now in debate. I have hitherto attended with diligence but no great anxiety, to the reasoning of the ablest partizans on both sides of the question. Indeed, I could have wished for a more effectual, and (if I may term it so) a more *feeling* representation in the lower house, and for a representation of the *people* in the senate—I have been and still am desirous of a rotation in office, to prevent the final perpetuation of power in the same men.—And I have not been able clearly to see why the *place* and *manner* of holding elections should be in the disposal of Congress. 4.5.7

But, sir, in my humble opinion, these things are comparative by the lesser things of the law.—They doubtless have their influence in the grand effect, and so are essential to the system—But, sir, I view the section to which we have at length arrived [Art. I, sec. 8] as the cement of the fabrick, and this clause as the key-stone, or (if I may apply the metaphor) the magick talisman on which the fate of it depends. 4.5.8

Allow me, sir, to recall to your remembrance that *yesterday*, when States were in doubt about granting to Congress a five per cent. impost, and the simple power of regulating trade—the time, when so delicate was the patriotick mind, that power was to be transferred with reluctant, with a sparing hand—and the most obvious utility could scarcely extort it from the people. It appears to me of some importance, to consider this matter, and to demand complete satisfaction upon the question, why an unlimited power in the affair of taxation, is so soon required? Is our situation so vastly different, that the powers so lately sufficient, are now but the dust of the balance? I observe, sir, that many men, who within a few years past, were strenuous opposers of an augmentation of the power of Congress, are now the warmest advocates of power, so large as not to admit of a comparison with those which they opposed. Cannot some of them state their reasons then, and their reasons now, that we may judge of their consistency—or shall we be left to suppose that the opinions of politicians, like those of the multitude, vibrate from one extreme to the other, and that we have no men among us to whom we can intrust the philosophick task of pointing out the golden mean? 4.5.9

At present, Congress have no power to lay taxes, &c. nor even to compel a compliance with their requisitions. May we not suppose, that the members of the great Convention, had severely felt the impotency of Congress, while 4.5.10

they were in it, and therefore were rather too keenly set for an effectual increase of power? That the difficulties they had encountered, in obtaining decent requisitions, had wrought in them a degree of impatience, which prompted them to demand the purse-strings of the nation, as if we were insolvent, and the proposed Congress were to compound with our creditors?—Whence, Sir, can this great, I had almost said, this bold demand have originated? Will it be said that it is but a consistent and necessary part of the general system? I shall not deny these gentlemen the praise of inventing a system completely consistent with itself, and pretty free from contradiction—but I would ask, I shall expect to be answered, how a system can be necessary for *us*, of which this is a consistent and necessary part?

4.5.11 But, Sir, to the paragraph in hand—Congress, &c.

Here, Sir, (however kindly Congress may be pleased to deal with us) is a very good and valid conveyance of all the property in the United States—to certain uses indeed, but those uses capable of any construction, the trustee may think proper to make. This body is not amenable to any tribunal, and therefore, this Congress can do no wrong—It will not be denied that they *may* tax us to any extent, but some gentlemen are fond of arguing that this body never *will* do any thing but what is for the common good. Let us consider that matter.

4.5.12 Faction, Sir, is the vehicle of all transactions in publick bodies, and when gentlemen know this so well, I am rather surprized to hear them so sanguine in this respect.[3] The prevalent faction *is the body*—these gentlemen, therefore, must mean that the prevalent faction will always be right, and that the true patriots will always out number the men of less and selfish principles. From this it would follow, that no publick measure was ever wrong, because it must have been passed by the majority, and so, I grant no power ever was, or will be abused.—In short, we know that all governments have degenerated, and consequently have abused the powers reposed in them, and why we should imagine better of the proposed Congress than of myriads of publick bodies who have gone before them, I cannot at present conceive.

4.5.13 Sir, we ought (I speak it with submission) to consider that what we now grant from certain motives, well grounded at present, will be exacted of posterity as a prerogative when we are not alive, to testify the tacit conditions of the grant—that the wisdom of this age will then be pleaded by those in power—and that the cession we are now about to make will be actually clothed with the venerable habit of ancestral sanction.[4]

Therefore, sir, I humbly presume we ought not to take advantage of our situation in point of time, so as to bind posterity to be obedient to laws, they may very possibly disapprove, nor expose them to a rebellion which at that period will very probably end only in their farther subjugation.

4.5.14 The paragraph in question is an absolute decree of the people. The Congress *shall* have power—it does not say that they shall *exercise* it—but our necessities say, they *must*, and the experience of ages says, that they *will*,[5] and finally, when the expenses of the nation, by their ambition are grown

enormous, that they will oppress and subject.—For sir, they may lay taxes, duties, imposts and excises! One would suppose that the Convention, sir, were not at all afraid to multiply words when any thing was to be got by it. By another clause, all imposts and duties, on exports and imports, wherever laid, go into the federal chest—so that Congress may not only lay imposts and excises, but all imposts and duties that are laid on imports and exports, by any State, shall be a part of the national revenue—and besides, Congress may lay an impost on the produce and manufactures of the country, which are consumed at home.—And all these shall be equal through the States.—Here sir, I raise two objections; 1st. that Congress should have this power. It is a universal, unbounded permission; and as such, I think, no free people ought ever to consent to it, especially in so important a matter as that of property. I will not descend, sir, to an abuse of this future Congress, until it exists, nor then, until it misbehaves, nor then, unless I dare. But I think that some certain revenue amply adequate to all necessary purposes, upon a peace establishment, but certain and definite would have been better, and the collection of it might have been guaranteed by every State to every other. We should then have known to what we were about to subscribe and should have chearfully granted it. But now, we may indeed grant, but who can *chearfully* grant he knows not what?

Again, sir, I object to the equality of these duties through the States. It matters not with me, in the present argument, which of them will suffer by this proportion. Some probably *will,* as the consumption of dutied articles will not, if we may judge from experience, be uniform in all. 4.5.15

But some say, with whom I have conversed, it was for this reason that taxes were provided, that by their assistance the defect of duties in some States ought to be supplied. Now then, let us suppose, that the duties are so laid, that if every State paid in proportion, to that which paid most, the duties alone would supply a frugal treasury. Some States will pay but half their proportion, and some will scarcely pay any thing. But those in general who pay the least duty, viz. the inland States, are least of all able to pay a land tax, and therefore I do not see but this tax would operate most against those who are least able to pay it. 4.5.16

I humbly submit it, sir, whether, if each State had its proportion of some certain gross sum assigned, according to its numbers, and a power was given to Congress, to collect the same, in case of default in the State, this would not have been a safer Constitution. For, sir, I also disapprove of the power to collect, which is here vested in Congress; it is a power, sir, to burden us with a standing army of ravenous collectors; harpies perhaps from another State, but who, however, were never known to have bowels for any purpose, but to fatten on the life-blood of the people. In one age or two this will be the case, and when the Congress shall become tyrannical, these vultures, their servants, will be the tyrants of the village, by whose presence, all freedom of speech and action, will be taken away. 4.5.17

Sir, I shall be told that these are imaginary evils—but I hold to this 4.5.18

maxim, that power was never given (of this kind especially) but it was exercised, nor ever exercised but it was finally abused. We must not be amused with handsome probabilities, but we must be assured that we *are in no danger*, and that this Congress *could* not distress us, if they were ever so much disposed.

4.5.19 To pay the debts, &c.

These words, sir, I confess are an ornament to the page. And very musical words—But they are too general to be understood as any kind of limitations of the power of Congress, and not very easy to be understood at all. When Congress have the purse, they are not confined to rigid oeconomy, and the word debts here is not confined to debts already contracted, or indeed, if it were, the term "general welfare" might be applied to any expenditure whatever. Or if it could not, who shall dare to gainsay the proceedings of this body at a future day, when according to the course of nature it shall be too firmly fixed in the saddle, to be overthrown by any thing but a general insurrection? An event not to be expected considering the extent of this Continent; and if it were to be expected, a sufficient reason in itself for rejecting this or any Constitution that would tend to produce it.

4.5.20 This clause, sir, contains the very sinews of the Constitution. And I hope the universality of it may be singular; but it may be easily seen, that it tends to produce in time, as universal powers in every other respect. As the poverty of individuals prevents luxury, so the poverty of publick bodies, whether sole or aggregate, prevents tyranny. A nation cannot, perhaps, do a more politick thing, than to supply the purse of its sovereign with that parsimony, which results from a sense of the labour it costs, and so to compel him to comply with the genius of his people, and conform to their situation, whether he will or not. How different will be our conduct, if we give the entire disposal of our property to a body, as yet almost unknown in theory, in practice quite heterogeneous in its composition, and whose maxims are yet intirely unknown.

4.5.21 Sir, I wish the gentlemen, who so ably advocate this instrument, would enlarge upon this formidable clause and I most sincerely wish that the effect of their reasoning may be my conviction. For, sir, I will not dishonour my constituents, by supposing that they expect me to resist that which is irresistible; the force of reason. No, sir, my constituents ardently wish for a firm, efficient continental government, but fear the operation of this which is now proposed. Let them be convinced that their fears are groundless, and I venture to declare in their name, that no town in the commonwealth, will sooner approve the form, or be better subjects under it.

1. See Symmes' elaboration of this point in the Massachusetts convention on 22 January 1788, 4.5.9–11.
2. Cf. Monroe 5.21.12 n. 3.
3. The discussion here should be compared with *The Federalist* no. 10.
4. Cf. *The Federalist* no. 49.

5. Publius agrees. Speaking also of taxation, he says: "I believe it may be regarded as a position, warranted by the history of mankind, that *in the usual progress of things, the necessities of a nation in every stage of its existence will be found at least equal to its resources.*" *The Federalist* no. 30, 190. In John Francis Mercer's version (5.5.10), "in Government what may be done will be done." See above DeWitt 4.3.23; Smith 6.12.36–37.

Letters of Agrippa

MASSACHUSETTS GAZETTE
November 1787–February 1788

The important *Agrippa* letters appear to have been written by James Winthrop.[1] The son of mathematics professor John Winthrop of Harvard, James became librarian of Harvard in 1770 following his graduation from that institution. He became register of probate in Middlesex in 1787 and Judge of Common Pleas in 1791. While Harvard librarian, he fought in the Revolution, was postmaster of Cambridge, and served as a volunteer against the Shays insurgents. Winthrop was twice passed over for his father's professorship in mathematics because, it is reported, his "intemperate manner and . . . eccentricities militated against him."[2] His chief literary effort was a study and interpretation of biblical prophecies.

The letters of Agrippa are vigorously and well argued, but were not much reprinted, probably because of their preoccupation with the interests of Massachusetts. That preoccupation deserves the reader's close attention, however, because it reflects the principled selfishness that is the ground of Agrippa's argument (VII, 4.6.26–29). The letters fall into two distinct sets, the first (I–XI, 4.6.1–47) addressed to the people of Massachusetts, the second (XII–XVI, 4.6.48–79) to the Massachusetts Convention. This fact explains much of the repetition and some of the variation in Agrippa's arguments. In both sets there are highly theoretical arguments as well as specific criticisms of the proposed Constitution and suggestions for action; but the differences in form and focus are due partly to the different circumstances and audiences to which the papers were addressed.

Each of the sets of letters has its own plan or outline, although Agrippa frequently allows the argument to stray, and indeed some of the most interesting and fruitful observations are made in the course of diversions or secondary arguments. The overall theme concerns the connection between freedom, commerce, and local institutions. The chief dangers of the proposed Constitution are, first, the destruction of the states, which are necessary because of the heterogeneity to be found in the United States, and, second, the stifling of commerce by excessive regulation.

The first set of papers is particularly interesting on the question of the small republic (IV, 4.6.14–17) and on commerce as the bond of Union (VIII,

4.6.30–33). Agrippa reveals here, in a particularly open way, a tension that is quite common in Anti-Federalist thought between the claims of civic virtue and of commerce as the bond of civil society. The second set of letters contains an extended and significant discussion of the Bill of Rights. A brief outline follows.

Part I—To the People

I. Introduction and general sketch: Freedom is necessary to industry; great objective should be to encourage the spirit of commerce (I, 4.6.1–6).

II. Advantages of present system: efficiency of states for internal regulation (II, III, 4.6.7–13).

III. Disadvantages of the consolidation implicit in the proposed Constitution (IV–VII, 4.6.14–29).

  A. Impossibility of governing an extensive empire on republican principles except as a confederated republic because of the heterogeneity of the parts. Yet the new system is a consolidation (IV, 4.6.14–17).

  B. Proof that the new system is a consolidation (V–VI, 4.6.18–25).

  C. Harm of this consolidation for Massachusetts (VII, 4.6.26–29).

IV. The true bond of Union is commerce (VIII–IX, 4.6.30–37).

  A. We are now a federal republic under that moderate political authority that is necessary to the peaceful operation of commercial intercourse (VIII, 4.6.30–33).

  B. Criticism of deficiencies of Articles of Confederation taken up:

    (1) regarding taxation (VIII, 4.6.30–33)

    (2) regarding regulation of intercourse with foreign nations (IX, 4.6.34–37).

V. Summary and suggested amendments to Articles of Confederation (X, 4.6.38–44).

(VI. P.S.—attack on Federalist Party [XI, 4.6.45–47]).

Part II—To the Massachusetts Convention

This second set of papers consists of a long paper devoted to the subject of the Federal Republic, and retracing much of the ground of the first set of papers (but sometimes with interesting elaborations), together with a new discussion of the Bill of Rights, and a set of proposed amendments to the Constitution.

I. Federal Republic is the form of government best suited to answer both internal and external needs. This is the system we now possess; it can be improved by modest amendments; it would be destroyed by the proposed Constitution (XII, 4.6.48–59).

II. Bill of Rights and Constitution (XIII–XV, 4.6.60–71).

III. Proposed Amendments to the Constitution (XVI, 4.6.72–79).

1. "It is said Winthrop writes under Agrippa. These pieces gain him no credit." C. Gore to R. King, 23 December 1787, *King, Life and Correspondence* I, 265; Ford, *Essays* 40, 51–52; Charles Warren, "Elbridge Gerry, James Warren, Mercy Warren, and the Ratification of the Federal Constitution in Massachusetts," Massachusetts Historical Society *Proceedings* 64 (1930–32):147, n. 6; Harding, *Contest over Ratification* 21, n.1.

Ford's reprinting of these letters (*Essays* 53–122) contains errors of numbering and dating and an omission, which are identified in the notes here. As Ford points out (p. 51), Agrippa's letters called forth a number of replies; but none of these seriously took up his arguments. See *Massachusetts Gazette* 30 November 1787 (Cassius, reprinted in Ford, *Essays* 22–23); 21 December 1787 ("Charles James Fox"); 28 December 1787, 4 January 1788 ("Kempis O'Flanagan"); 25 January 1788 (Janius).

2. Clifford K. Shipton, "James Winthrop," *Dictionary of American Biography* XX, 407. As evidence of Winthrop's eccentricity Shipton relates that in the *Memoirs* of the American Academy of Arts and Sciences he published "fallacious solutions" of certain problems in mathematics, "to the great mortification of the other members."

I
23 November 1787

To the People.

4.6.1 Many inconveniencies and difficulties in the new plan of government have been mentioned by different writers on that subject. Mr Gerry has given the publick his objections against it, with a manly freedom.[1] The seceding members from the Pennsylvania Assembly also published theirs.[2] Various anonymous writers have mentioned reasons of great weight. Among the many objections have been stated the unlimited right of taxation—a standing army—an inadequate representation of the people—a right to destroy the constitution of the separate states, and all the barriers that have been set up in defence of liberty—the right to try causes between private persons in many cases without a jury; without trying in the vicinity of either party; and without any limitation of the value which is to be tried. To none of these or any other objections has any answer been given, but such as have acknowledged the truth of the objection while they insulted the objector. This conduct has much the appearance of trying to force a general sentiment upon the people.

4.6.2 The idea of promoting the happiness of the people by opposing all their habits of business, and by subverting the laws to which they are habituated, appears to me to be at least a mistaken proceeding. If to this we add the limitations of trade, restraints on its freedom, and the alteration of its course, and *transfer of the market*, all under the pretence of regulation for *federal purposes*, we shall not find any additional reason to be pleased with the plan.

4.6.3 It is now conceded on all sides that the laws relating to civil causes were never better executed than at present. It is confessed by a warm federalist in answer to mr. Gerry's sensible letter, that the courts are so arranged at

present that no inconvenience is found, and that if the new plan takes place great difficulties may arise.[3] With this confession before him, can any reasonable man doubt whether he shall exchange a system, found by experience to be convenient, for one that is in many respects inconvenient, and dangerous? The expense of the new plan is terrifying, if there was no other objection. But they are multiplied. Let us consider that of the representation.

4.6.4 There is to be one representative for every thirty thousand people. Boston would nearly send one, but with regard to another there is hardly a county in the state which would have one. The representatives are to be chosen for two years. In this space, when it is considered that their residence is from two hundred to five [hundred?] miles from their constituents, it is difficult to suppose that they will retain any great affection for the welfare of the people. They will have an army to support them, and may bid defiance to the clamours of their subjects. Should the people cry aloud the representative may avail himself of the right to alter the *time of election* and postpone it for another year. In truth, the question before the people is, *whether they will have a limited government or an absolute one?*

4.6.5 It is a fact justified by the experience of all mankind from the earliest antiquity down to the present time, that freedom is necessary to industry. We accordingly find that in absolute governments, the people, be the climate what it may, are [in] general lazy, cowardly, turbulent, and vicious to an extreme. On the other hand, in free countries are found in general, activity, industry, arts, courage, generosity, and all the manly virtues.

Can there be any doubt which to choose? He that hesitates must be base indeed.

4.6.6 A favourite objection against a free government is drawn from the irregularities of the Greek and Roman republicks. But it is to be considered that war was the employment which they considered as most becoming freemen. Agriculture, arts, and most domestick employment were committed chiefly to slaves. But Carthage, the great commercial republick of antiquity, though resembling Rome in the form of its government, and her rival for power, retained her freedom longer than Rome, and was never disturbed by sedition during the long period of her duration.[4] This is a striking proof that the fault of the Greek and Roman republicks was not owing to the form of their government, and that the spirit of commerce is the great bond of union among citizens.[5] This furnishes employment for their activity, supplies their mutual wants, defends the rights of property, and producing reciprocal dependencies, renders the whole system harmonious and energetick. Our great object therefore ought to be to encourage this spirit. If we examine the present state of the world we shall find that most of the business is done in the freest states, and that industry decreases in proportion to the rigour of government.

Agrippa.

II
27 November 1787

To the People of Massachusetts.

4.6.7 In the Gazette of the 23d instant, I ascertained from the state of other countries and the experience of mankind, that free countries are most friendly to commerce and to the rights of property. This produces greater internal tranquillity. For every man, finding sufficient employment for his active powers in the way of trade, agriculture and manufactures, feels no disposition to quarrel with his neighbour, nor with the government which protects him, and of which he is a constituent part.[6] Of the truth of these positions we have abundant evidence in the history of our own country. Soon after the settlement of Massachusetts, and its formation into a commonwealth, in the earlier part of the last century, there was a sedition at Hingham and Weymouth. The governour passing by at that time with his guard, seized some of the mutineers and imprisoned them. This was complained of as a violation of their rights, and the governour lost his election the next year; but the year afterwards was restored and continued to be re-elected for several years. The government does not appear to have been disturbed again till the revocation of the charter in 1686, being a period of about half a century.[7]

4.6.8 Connecticut set out originally on the same principles, and has continued uniformly to exercise the powers of government to this time.

During the last year, we had decisive evidences of the vigour of this kind of government.[8] In Connecticut, the treason was restrained while it existed only in the form of conspiracy. In Vermont, the conspirators assembled in arms, but were suppressed by the exertions of the militia, under the direction of their sheriffs. In New-Hampshire, the attack was made on the legislature, but the insurrection was in a very few hours suppressed, and has never been renewed. In Massachusetts, the danger was, by delay, suffered to increase. One judicial court after another was stopped, and even the capital trembled. Still, however, when the supreme executive gave the signal, a force of many thousands of active, resolute men, took the field, during the severities of winter, and every difficulty vanished before them. Since that time we have been continually coalescing. The people have applied with diligence to their several occupations, and the whole country wears one face of improvement. Agriculture has been improved, manufactures multiplied, and trade prodigiously enlarged. These are the advantages of freedom in a growing country. While our resources have been thus rapidly increasing, the courts have set in every part of the commonwealth, without any guard to defend them; have tried causes of every kind, whether civil or criminal, and the sheriffs, have in no case been interrupted in the execution of their office. In those cases indeed, where the government was more

particularly interested, mercy has been extended, but in civil causes, and in the case of moral offences, the law has been punctually executed. Damage done to individuals, during the tumults, has been repaired, by judgment of the courts of law, and the award has been carried into effect. This is the present state of affairs, when we are asked to relinquish that freedom which produces such happy effects.

The attempt has been made to deprive us of such a beneficial system, and 4.6.9
to substitute a rigid one in its stead, by criminally alarming our fears, exalting certain characters on one side, and villifying them on the other.[9] I wish to say nothing of the merits or demerits of individuals; such arguments always do hurt. But assuredly my countrymen cannot fail to consider and determine who are the most worthy of confidence in a business of this magnitude.—Whether they will trust persons, who have, from their cradles, been incapable of comprehending any other principles of government, than those of absolute power, and who have, in this very affair, tried to deprive them of their constitutional liberty, by a pitiful trick. They cannot avoid prefering those who have uniformly exerted themselves to establish a limited government, and to secure to individuals all the liberty that is consistent with justice, between man and man, and whose efforts, by the smiles of Providence, have hitherto been crowned with the most splendid success. After the treatment we have received, we have a right to be jealous, and to guard our present constitution with the strictest care. It is the right of the people to judge, and they will do wisely to give an explicit instruction to their delegates in the proposed convention, not to agree to any proposition that will, in any degree, militate with that happy system of government under which Heaven has placed them.

Agrippa.

November 24, 1787.

III

30 November 1787

To the People.

It has been proved, from the clearest evidence, in two former papers, that a 4.6.10
free government, I mean one in which the power frequently returns to the body of the people, is in principle the most stable and efficient of any kind; that such a government affords the most ready and effectual remedy for all injuries done to persons and the rights of property. It is true we have had a tender act. But what government has not some law in favour of debtors? The difficulty consists in finding one that is not more unfriendly to the creditors than ours. I am far from justifying such things. On the contrary I

believe that it is universally true, that acts made to favour a part of the community are wrong in principle. All that is now intended is, to remark that we are not worse than other people in that respect which we most condemn. Probably the inquiry will be made, whence the complaints arise. This is easily answered. Let any man look round his own neighbourhood, and see if the people are not, with a very few exceptions, peaceable and attached to the government; if the country had ever within their knowledge more appearance of industry, improvement and tranquillity; if there was ever more of the produce of all kinds together for the market; if their stock does not rapidly increase; if there was ever a more ready vent for their surplus; and if the average of prices is not about as high as was usual in a plentiful year before the war. These circumstances all denote a general prosperity. Some classes of citizens indeed suffer greatly. Two descriptions I at present recollect. The publick creditors form the first of these classes and they ought to, and will be provided for. Let us for a moment consider their situation and prospects. The embarrassments consequent upon a war, and the usual reduction of prices immediately after a war, necessarily occasioned a want of punctuality in publick payments. Still however the publick debt has been very considerably reduced, not by the dirty and delusive scheme of depreciation, but the nominal sum. Applications are continually making for purchases in our eastern and western lands. Great exertions are making for clearing off the arrears of outstanding taxes, so that the certificates for interest on the state debt have considerably increased in value. This is a certain indication of returning credit. Congress this year disposed of a large tract of their lands towards paying the principal of their debt. Pennsylvania has discharged the whole of their part of the continental debt. New-York has nearly cleared its state debt, and has located a large part of their new lands towards paying the continental demands. Other states have made considerable payments. Every day from these considerations the publick ability and inclination to satisfy their creditors increases. The exertions of last winter were as much to support publick as private credit. The prospect therefore of the publick creditors is brightening under the present system. If the new system should take effect without amendments, which however is hardly probable, the increase of expense will be death to the hopes of all creditors both of the continental and of the state. With respect however to our publick delays of payment we have the precedent of the best established countries in Europe.

4.6.11 The other class of citizens to which I alluded was the ship-carpenters. All agree that their business is dull; but as nobody objects against a system of commercial regulations for the whole continent, that business may be relieved without subverting all the ancient foundations and laws which have the respect of the people. It is a very serious question whether giving to Congress the unlimited right to regulate trade would not injure them still further. It is evidently for the interest of the state to encourage our own

trade as much as possible. But in a very large empire, as the whole states consolidated must be, there will always be a desire of the government to increase the trade of the capital, and to weaken the extremes. We should in that case be one of the extremes, and should feel all the impoverishment incident to that situation. Besides, a jealousy of our enterprising spirit, would always be an inducement to cramp our exertions. We must then be impoverished or we must rebel. The alternative is dreadful.

4.6.12 At present this state is one of the most respectable and one of the most influential in the union. If we alone should object to receiving the system without amendments, there is no doubt but it would be amended. But the case is not quite so bad. New-York appears to have no disposition even to call a convention. If they should neglect, are we to lend our assistance to compel them by arms, and thus to kindle a civil war without any provocation on their part. Virginia has put off their convention till May, and appears to have no disposition to receive the new plan without amendments. Pennsylvania does not seem to be disposed to receive it as it is. The same objections are made in all the states, that the civil government which they have adopted and which secures their rights will be subverted. All the defenders of this system undertake to prove that the rights of the states and of the citizens are kept safe. The opposers of it agree that they will receive the least burdensome system which shall defend those rights.

4.6.13 Both parties therefore found their arguments on the idea that these rights ought to be held sacred. With this disposition is it not in every man's mind better to recommit it to a new convention, or to Congress, which is a regular convention for the purpose, and to instruct our delegates to confine the system to the general purposes of the union, than to *endeavour* to force it through in its present form, and with so many opposers as it must have in every state on the continent. The case is not of such pressing necessity as some have represented. Europe is engaged and we are tranquil. Never therefore was an happier time for deliberation. The supporters of the measure are by no means afraid of insurrections taking place, but they are afraid that the present government will prove superiour to their assaults.

Agrippa.

IV

3 December 1787

To the People.

4.6.14 Having considered some of the principal advantages of the happy form of government under which it is our peculiar good fortune to live, we find by

experience, that it is the best calculated of any form hitherto invented, to secure to us the rights of our persons and of our property, and that the general circumstances of the people shew an advanced state of improvement never before known. We have found the shock given by the war in a great measure obliterated, and the publick debt contracted at that time to be considerably reduced in the nominal sum. The Congress lands are fully adequate to the redemption of the principal of their debt, and are selling and populating very fast. The lands of this state, at the west, are, at the moderate price of eighteen pence an acre, worth near half a million pounds in our money. They ought, therefore, to be sold as quick as possible. An application was made lately for a large tract at that price, and continual applications are made for other lands in the eastern part of the state. Our resources are daily augmenting.

4.6.15 We find, then, that after the experience of near two centuries our separate governments are in full vigour. They discover, for all the purposes of internal regulation, every symptom of strength, and none of decay. The new system is, therefore, for such purposes, useless and burdensome.

4.6.16 Let us now consider how far it is practicable consistent with the happiness of the people and their freedom. It is the opinion of the ablest writers on the subject, that no extensive empire can be governed upon republican principles, and that such a government will degenerate to a despotism, unless it be made up of a confederacy of smaller states, each having the full powers of internal regulation.[10] This is precisely the principle which has hitherto preserved our freedom. No instance can be found of any free government of considerable extent which has been supported upon any other plan. Large and consolidated empires may indeed dazzle the eyes of a distant spectator with their splendour, but if examined more nearly are always found to be full of misery. The reason is obvious. In large states the same principles of legislation will not apply to all the parts. The inhabitants of warmer climates are more dissolute in their manners, and less industrious, than in colder countries. A degree of severity is, therefore, necessary with one which would cramp the spirit of the other.[11] We accordingly find that the very great empires have always been despotick. They have indeed tried to remedy the inconveniences to which the people were exposed by local regulations; but these contrivances have never answered the end. The laws not being made by the people, who felt the inconveniences, did not suit their circumstances. It is under such tyranny that the Spanish provinces languish, and such would be our misfortune and degradation, if we should submit to have the concerns of the whole empire managed by one legislature. To promote the happiness of the people it is necessary that there should be local laws; and it is necessary that those laws should be made by the representatives of those who are immediately subject to the want of them. By endeavouring to suit both extremes, both are injured.

4.6.17 It is impossible for one code of laws to suit Georgia and Massachusetts.

They must, therefore, legislate for themselves. Yet there is, I believe, not one point of legislation that is not surrendered in the proposed plan. Questions of every kind respecting property are determinable in a continental court, and so are all kinds of criminal causes. The continental legislature has, therefore, a right to make rules *in all cases* by which their judicial courts shall proceed and decide causes. No rights are reserved to the citizens. The laws of Congress are in all cases to be the supreme law of the land, and paramount to the constitutions of the individual states. The Congress may institute what modes of trial they please, and no plea drawn from the constitution of any state can avail. This new system is, therefore, a consolidation of all the states into one large mass, however diverse the parts may be of which it is to be composed. The idea of an uncompounded republick, on an average, one thousand miles in length, and eight hundred in breadth, and containing six millions of white inhabitants all reduced to the same standard of morals, or habits, and of laws, is in itself an absurdity, and contrary to the whole experience of mankind. The attempt made by Great-Britain to introduce such a system, struck us with horrour, and when it was proposed by some theorist that we should be represented in parliament,[12] we uniformly declared that one legislature could not represent so many different interests for the purposes of legislation and taxation. This was the leading principle of the revolution, and makes an essential article in our creed. All that part, therefore, of the new system, which relates to the internal government of the states, ought at once to be rejected.

Agrippa.

V

11 December 1787

To the People.

In the course of inquiry it has appeared, that for the purposes of internal regulation and domestick tranquillity, our small and separate governments are not only admirably suited in theory, but have been remarkably successful in practice. It is also found, that the direct tendency of the proposed system, is to consolidate the whole empire into one mass, and, like the tyrant's bed, to reduce all to one standard. Though this idea has been stated in different parts of the continent, and is the most important trait of this draft, the reasoning ought to be extensively understood. I therefore hope to be indulged in a particular statement of it. 4.6.18

Causes of all kinds, between citizens of different states, are to be tried before a continental court. This court is not bound to try it according to the 4.6.19

local laws where the controversies happen; for in that case it may as well be tried in a state court. The rule which is to govern the new courts, must, therefore, be made by the court itself, or by its employers, the Congress. If by the former, the legislative and judicial departments will be blended; and if by the Congress, though these departments will be kept separate, still the power of legislation departs from the state in all those cases. The Congress, therefore, have the right to make rules for trying *all kinds* of *questions* relating to property between citizens of different states. The sixth article of the new constitution provides, that the continental laws shall be the supreme law of the land, and that all judges in the separate states shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding. All the state officers are also bound by oath to support this constitution. These provisions cannot be understood otherwise than as binding the state judges and other officers, to execute the continental laws in their own proper departments within the state. For all questions, other than those between citizens of the same state, are at once put within the jurisdiction of the continental courts. As no authority remains to the state judges, but to decide questions between citizens of the same state, and those judges are to be bound by the laws of Congress, it clearly follows, that all questions between citizens of the same state are to be decided by the general laws and not by the local ones.

4.6.20 Authority is also given to the continental courts, to try all causes between a state and its own citizens.[13] A question of property between these parties rarely occurs. But if such questions were more frequent than they are, the proper process is not to sue the state before an higher authority; but to apply to the supreme authority of the state, by way of petition. This is the universal practice of all states, and any other mode of redress destroys the sovereignty of the state over its own subjects. The only case of the kind in which the state would probably be sued, would be upon the state notes. The endless confusion that would arise from making the estates of individuals answerable, must be obvious to every one.

4.6.21 There is another sense in which the clause relating to causes between the state and individuals is to be understood, and it is more probable than the other, as it will be eternal in its duration, and increasing in its extent. This is the whole branch of the law relating to criminal prosecutions. In all such cases the state is plaintiff, and the person accused is defendant. The process, therefore, will be, for the attorney-general of the state to commence his suit before a continental court. Considering the state as a party, the cause must be tried in another, and all the expense of the transporting witnesses incurred. The individual is to take his trial among strangers, friendless and unsupported, without its being known whether he is habitually a good or a bad man; and consequently with one essential circumstance wanting by which to determine whether the action was performed maliciously or accidentally. All these inconveniences are avoided by the present

important restriction, that the cause shall be tried by a jury of the vicinity, and tried in the county where the offence was commited. But by the proposed *derangement*, I can call it by no softer name, a man must be ruined to prove his innocence. This is far from being a forced construction of the proposed form. The words appear to me not intelligible, upon the idea that it is to be a *system* of government, unless the construction now given, both for civil and criminal processes, be admitted. I do not say that it is intended that all these changes should take place within one year, but they probably will in the course of a half a dozen years, if this system is adopted. In the mean time we shall be subject to all the horrors of a divided sovereignty, not knowing whether to obey the Congress or the state. We shall find it impossible to please two masters. In such a state frequent broils will ensue. Advantage will be taken of a popular commotion, and even the venerable forms of the state be done away, while the new system will be enforced in its utmost rigour by an army. I am the more apprehensive of a standing army, on account of a clause in the new constitution which empowers Congress to keep one at all times; but this constitution is evidently such that it cannot stand any considerable time without an army. Upon this principle one is very wisely provided. Our present government knows of no such thing.

Agrippa.

VI

14 December 1787

To the People.

To prevent any mistakes, or misapprehensions of the argument, stated in my last paper, to prove that the proposed constitution is an actual consolidation of the separate states into one extensive commonwealth, the reader is desired to observe, that in the course of the argument, the new plan is considered as an intire system. It is not dependent on any other book for an explanation, and contains no references to any other book. All the defences of it, therefore, so far as they are drawn from the state constitutions, or from maxims of the common law, are foreign to the purpose. It is only by comparing the different parts of it together, that the meaning of the whole is to be understood. For instance— 4.6.22

We find in it, that there is to be a legislative assembly, with authority to constitute courts for the trial of all kinds of civil causes, between citizens of different states. The right to appoint such courts necessarily involves in it the right of defining their powers, and determining the rules by which their judgment shall be regulated; and the grant of the former of those rights is 4.6.23

nugatory without the latter. It is vain to tell us, that a maxim of common law requires contracts to be determined by the law existing where the contract was made: for it is also a maxim, that the legislature has a right to alter the common law. Such a power forms an essential part of legislation. Here, then a declaration of rights is of inestimable value. It contains those principles which the government never can invade without an open violation of the compact between them and the citizens.[14] Such a declaration ought to have come to the new constitution in favour of the legislative rights of the several states, by which their sovereignty over their own citizens within the state should be secured. Without such an express declaration the states are annihilated in reality upon receiving this constitution—the forms will be preserved only during the pleasure of Congress.

4.6.24 The idea of consolidation is further kept up in the right given to regulate trade.[15] Though this power under certain limitations would be a proper one for the department of Congress; it is in this system carried much too far, and much farther than is necessary. This is, without exception, the most commercial state upon the continent. Our extensive coasts, cold climate, small estates, and equality of rights, with a variety of subordinate and concurring circumstances, place us in this respect at the head of the union. We must, therefore, be indulged if a point which so nearly relates to our welfare be rigidly examined. The new constitution not only prohibits vessels, bound from one state to another, from paying any duties, but even from entering and clearing. The only use of such a regulation is, to keep each state in complete ignorance of its own resources. It certainly is no hardship to enter and clear at the custom house, and the expense is too small to be an object.

4.6.25 The unlimitted right to regulate trade, includes the right of granting exclusive charters. This, in all old countries, is considered as one principal branch of prerogative. We find hardly a country in Europe which has not felt the ill effects of such a power. Holland has carried the exercise of it farther than any other state; and the reason why that country has felt less evil from it is, that the territory is very small, and they have drawn large revenues from their colonies in the East and West Indies. In this respect, the whole country is to be considered as a trading company, having exclusive privileges. The colonies are large in proportion to the parent state; so that, upon the whole, the latter may gain by such a system. We are also to take into consideration the industry which the genius of a free government inspires. But in the British islands all these circumstances together have not prevented them from being injured by the monopolies created there. Individuals have been enriched, but the country at large has been hurt. Some valuable branches of trade being granted to companies, who transact their business in London, that city is, perhaps, the place of the greatest trade in the world. But Ireland, under such influence, suffers exceedingly, and is impoverished; and Scotland is a mere bye-word. Bristol, the second city in

England, ranks not much above this town in population. These things must be accounted for by the incorporation of trading companies; and if they are felt so severely in countries of small extent, they will operate with tenfold severity upon us, who inhabit an immense tract; and living towards one extreme of an extensive empire, shall feel the evil, without retaining that influence in government, which may enable us to procure redress. There ought, then, to have been inserted a restraining clause which might prevent the Congress from making any such grant, because they consequentially defeat the trade of the out-ports, and are also injurious to the general commerce, by enhancing prices and destroying that rivalship which is the great stimulus to industry.

Agrippa.

VII

18 December 1787

To the People.

There cannot be a doubt, that, while the trade of this continent remains free, the activity of our countrymen will secure their full share. All the estimates for the present year, let them be made by what party they may, suppose the balance of trade to be largely in our favour. The credit of our merchants is, therefore, fully established in foreign countries. This is a sufficient proof, that when business is unshackled, it will find out that channel which is most friendly to its course. We ought, therefore, to be exceedingly cautious about diverting or restraining it. Every day produces fresh proofs, that people, under the immediate pressure of difficulties, do not, at first glance, discover the proper relief. The last year, a desire to get rid of embarrassments induced many honest people to agree to a tender-act, and many others, of a different description, to obstruct the courts of justice. Both these methods only increased the evil they were intended to cure. Experience has since shewn, that, instead of trying to lessen an evil by altering the present course of things, every endeavour[16] should have been applied to facilitate the course of law, and thus to encourage a mutual confidence among the citizens, which increases the resources of them all, and renders easy the payment of debts. By this means one does not grow rich at the expense of another, but all are benefited. The case is the same with the states. Pennsylvania, with one port and a large territory, is less favourably situated for trade than the Massachusetts, which has an extensive coast in proportion to its limits of jurisdiction. Accordingly a much larger proportion of our people

4.6.26

are engaged in maritime affairs. We ought therefore to be particularly attentive to securing so great an interest. It is vain to tell us that we ought to overlook local interests. It is only by protecting local concerns, that the interest of the whole is preserved. No man when he enters into society, does it from a view to promote the good of others, but he does it for his own good. All men having the same view are bound equally to promote the welfare of the whole. To recur then to such a principle as that local interests must be disregarded, is requiring of one man to do more than another, and is subverting the foundation of a free government. The Philadelphians would be shocked with a proposition to place the seat of general government and the unlimited right to regulate trade in the Massachusetts. There can be no greater reason for our surrendering the preference to them. Such sacrifices, however we may delude ourselves with the form of words, always originate in folly, and not in generosity.[17]

4.6.27 Let me now request your attention a little while to the actual state of publick credit, that we may see whether it has not been as much misrepresented as the state of our trade.

At the beginning of the present year, the whole continental debt was about twelve millions of pounds in our money. About one quarter part of this sum was due to our foreign creditors. Of these France was the principal, and called for the arrears of interest. A new loan of one hundred and twenty thousand pounds was negotiated in Holland, at five per cent. to pay the arrears due to France. At first sight this has the appearance of bad economy, and has been used for the villainous purpose of disaffecting the people. But in the course of this same year, Congress have negotiated the sale of as much of their western lands on the Ohio and Missisippi, as amount nearly to the whole sum of the foreign debt; and instead of a dead loss by borrowing money at five per cent. to the amount of an hundred and twenty thousand pounds, in one sum, they make a saving of the interest at six per cent. on three millions of their domestick debt, which is an annual saving of an hundred and eighty thousand pounds. It is easy to see how such an immense fund as the western territory may be applied to the payment of the foreign debt. Purchasers of the land would as willingly procure any kind of the produce of the United States as they would buy loan office certificates to pay for the land. The produce thus procured would easily be negotiated for the benefit of our foreign creditors. I do not mean to insinuate that no other provision should be made for our creditors, but only to shew that our credit is not so bad in other countries as has been represented, and that our resources are fully equal to the pressure.

4.6.28 The perfection of government depends on the equality of its operation, as far as human affairs will admit, upon all parts of the empire, and upon all the citizens. Some inequalities indeed will necessarily take place. One man will be obliged to travel a few miles further than another man to procure justice.

But when he has travelled, the poor man ought to have the same measure of justice as the rich one. Small inequalities may be easily compensated. There ought, however, to be no inequality in the law itself, and the government ought to have the same authority in one place as in another. Evident as this truth is, the most plausible argument in favour of the new plan is drawn from the inequality of its operation in different states. In Connecticut, they have been told that the bulk of the revenue will be raised by impost and excise, and therefore they need not be afraid to trust Congress with the power of levying a dry tax at pleasure. New-York, and Massachusetts, are both more commercial states than Connecticut. The latter, therefore, hopes that the other two will pay the bulk of the continental expense. The argument is in itself delusive. If the trade is not over-taxed, the consumer pays it. If the trade is over-taxed, it languishes, and by the ruin of trade the farmer loses his market. The farmer has in truth no other advantage from imposts than that they save him the trouble of collecting money for the government. He neither gets or loses money by changing the mode of taxation. The government indeed finds it the easiest way to raise the revenue; and the reason is that the tax is by this means collected where the money circulates most freely. But if the argument was not delusive, it ought to conclude against the plan, because it would prove the unequal operation of it, and if any saving is to be made by the mode of taxing, the saving should be applied towards our own debt, and not to the payment of the part of a continental burden which Connecticut ought to discharge. It would be impossible to refute in writing all the delusions made use of to force this system through. Those respecting the publick debt, and the benefit of imposts, are the most important, and these I have taken pains to explain. In one instance indeed, the impost does raise money at the direct expense of the seaports. This is when goods are imported subject to a duty, and re-exported without a drawback. Whatever benefit is derived from this source, surely should not be transferred to another state, at least till our own debts are cleared.

Another instance of unequal operation is, that it establishes different degrees of authority in different states, and thus creates different interests. The lands in New-Hampshire having been formerly granted by this state, and afterwards by that state, to private persons, the whole authority of trying titles becomes vested in a continental court, and that state loses a branch of authority, which the others retain, over their own citizens. 4.6.29

I have now gone through two parts of my argument, and have proved the efficiency of the state governments for internal regulation, and the disadvantages of the new system, at least some of the principal. The argument has been much longer than I at first apprehended, or, possibly, I should have been deterred from it. The importance of the question has, however, prevented me from relinquishing it.

Agrippa.

VIII

25 December 1787

To the People.

4.6.30 It has been proved, by indisputable evidence, that power is not the grand principle of union among the parts of a very extensive empire; and that when this principle is pushed beyond the degree necessary for rendering justice between man and man, it debases the character of individuals, and renders them less secure in their persons and property. Civil liberty consists in the consciousness of that security, and is best guarded by political liberty, which is the share that every citizen has in the government. Accordingly all our accounts agree, that in those empires which are commonly called despotick, and which comprehend by far the greatest part of the world, the government is most fluctuating, and property least secure. In those countries insults are borne by the sovereign, which, if offered to one of our governours, would fill us with horrour, and we should think the government dissolving.

4.6.31 The common conclusion from this reasoning is an exceedingly unfair one, that we must then separate, and form distinct confederacies. This would be true if there was no principle to substitute in the room of power. Fortunately there is one. This is commerce.[18] All the states have local advantages, and in a considerable degree separate interests. They are, therefore, in a situation to supply each other's wants. Carolina, for instance, is inhabited by planters, while the Massachusetts is more engaged in commerce and manufactures. Congress has the power of deciding their differences. The most friendly intercourse may therefore be established between them. A diversity of produce, wants and interests, produces commerce, and commerce, where there is a common, equal and moderate authority to preside, produces friendship.

4.6.32 The same principles apply to the connection with the new settlers in the west. Many supplies they want, for which they must look to the older settlements, and the greatness of their crops enables them to make payments. Here, then, we have a bond of union which applies to all parts of the empire, and would continue to operate if the empire comprehended all America.

4.6.33 We are now, in the strictest sense of the terms, a federal republick. Each part has within its own limits the sovereignty over its citizens, while some of the general concerns are committed to Congress. The complaints of the deficiency of the Congressional powers are confined to two articles. They are not able to raise a revenue by taxation, and they have not a complete regulation of the intercourse between us and foreigners. For each of these complaints there is some foundation, but not enough to justify the clamour

which has been raised. Congress, it is true, owes a debt which ought to be paid. A considerable part of it has been paid. Our share of what remains would annually amount to about sixty or seventy thousand pounds. If, therefore, Congress were put in possession of such branches of the impost as would raise this sum in our state, we should fairly be considered as having done our part towards their debt; and our remaining resources, whether arising from impost, excise, or dry tax, might be applied to the reduction of our own debt. The principal of this last amounts to about thirteen hundred thousand pounds, and the interest to between seventy or eighty thousand. This is, surely, too much property to be sacrificed; and it is as reasonable that it should be paid as the continental debt. But if the new system should be adopted, the whole impost, with an unlimited claim to excise and dry tax, will be given to Congress. There will remain no adequate fund for the state debt, and the state will still be subject to be sued on their notes.—This is, then, an article which ought to be limited. We can, without difficulty, pay as much annually as shall clear the interest of our state debt, and our share of the interest on the continental one. But if we surrender the impost, we shall still, by this new constitution, be held to pay our full proportion of the remaining debt, as if nothing had been done. The impost will not be considered as being paid by this state, but by the continent. The federalists, indeed, tell us, that the state debts will all be incorporated with the continental debt, and all paid out of one fund. In this, as in all other instances, they endeavour to support their scheme of consolidation by delusion. Not one word is said in the book in favour of such a scheme, and there is no reason to think it true. Assurances of that sort are easily given, and as easily forgotton. There is an interest in forgetting what is false. No man can expect town debts to be united with that of the state; and there will be as little reason to expect, that the state and continental debts will be united together.

Agrippa.

IX

28 December 1787

To the People.

We come now to the second and last article of complaint against the present confederation, which is, that Congress has not the sole power to regulate the intercourse between us and foreigners. Such a power extends not only to war and peace, but to trade and naturalization. This last article ought never to be given them; for though most of the states may be willing for certain 4.6.34

reasons to receive foreigners as citizens, yet reasons of equal weight may induce other states, differently circumstanced, to keep their blood pure. Pennsylvania has chosen to receive all that would come there. Let any indifferent person judge whether that state in point of morals, education, energy is equal to any of the eastern states; the small state of Rhode-Island only excepted. Pennsylvania in the course of a century has acquired her present extent and population at the expense of religion and good morals. The eastern states have, by keeping separate from the foreign mixtures, acquired, their present greatness in the course of a century and an half, and have preserved their religion and morals.[19] They have also preserved that manly virtue which is equally fitted for rendering them respectable in war, and industrious in peace.

4.6.35 The remaining power for peace and trade might perhaps be safely enough lodged with Congress under some limitations. Three restrictions appear to me to be essentially necessary to preserve the equality of rights to the states, which it is the object of the state governments to secure to each citizen. 1st. It ought not to be in the power of Congress either by treaty or otherwise to alienate part of any state without the consent of the legislature. 2d. They ought not to be able by treaty or other law to give any legal preference to one part above another. 3d. They ought to be restrained from creating any monopolies. Perhaps others may propose different regulations and restrictions. One of these is to be found in the old confederation, and another in the newly proposed plan. The third seems to be equally necessary.

4.6.36 After all that has been said and written on this subject, and on the difficulty of amending our old constitution so as to render it adequate to national purposes, it does not appear that any thing more was necessary to be done, than framing two new articles. By one a limited revenue would be given to Congress with a right to collect it, and by the other a limited right to regulate our intercourse with foreign nations. By such an addition we should have preserved to each state its power to defend the rights of the citizens, and the whole empire would be capable of expanding, and receiving additions without altering its former constitution. Congress, at the same time, by the extent of their jurisdiction, and the number of their officers, would have acquired more respectability at home, and a sufficient influence abroad. If any state was in such a case to invade the rights of the Union, the other states would join in defence of those rights, and it would be in the power of Congress to direct the national force to that object. But it is certain that the powers of Congress over the citizens should be small in proportion as the empire is extended; that, in order to preserve the balance, each state may supply by energy what is wanting in numbers. Congress would be able by such a system as we have proposed to regulate trade with foreigners by such duties as should effectually give the preference to the produce and manufactures of our own country. We should then have a friendly intercourse

established between the states, upon the principles of mutual interest. A moderate duty upon foreign vessels would give an advantage to our own people, while it would avoid all the [dis]advantages arising from a prohibition, and the consequent deficiency of vessels to transport the produce of the southern states.

Our country is at present upon an average a thousand miles long from north to south, and eight hundred broad from the Missisippi to the Ocean. We have at least six millions of white inhabitants, and the annual increase is about two hundred and fifty thousand souls, exclusive of emigrants from Europe. The greater part of our increase is employed in settling the new lands, while the older settlements are entering largely into manufactures of various kinds. It is probable, that the extraordinary exertions of this state in the way of industry for the present year only, exceed in value five hundred thousand pounds. The new settlements, if all made in the same tract of country, would form a large state annually; and the time seems to be literally accomplished when a nation shall be born in a day. Such an immense country is not only capable of yielding all the produce of Europe, but actually does produce by far the greater part of the raw materials. The restrictions on our trade in Europe, necessarily oblige us to make use of those materials, and the high price of labour operates as an encouragement to mechanical improvements. In this way we daily make rapid advancements towards independence in resources as well as in empire. If we adopt the new system of government we shall by one rash vote lose the fruit of the toil and expense of thirteen years, at the time when the benefits of that toil and expense are rapidly increasing. Though the imposts of Congress on foreign trade may tend to encourage manufactures, the excise and dry tax will destroy all the beneficial effects of the impost, at the same time that they diminish our capital. Be careful then to give only a limited revenue, and the limited power of managing foreign concerns. Once surrender the rights of internal legislation and taxation, and instead of being respected abroad, foreigners will laugh at us, and posterity will lament our folly. 4.6.37

Agrippa.

X

1 January 1788

To the People.

Friends and Brethren,

It is a duty incumbent on every man, who has had opportunities for inquiry, to lay the result of his researches on any matter of publick im- 4.6.38

portance before the publick eye. No further apology will be necessary with the generality of my readers, for having so often appeared before them on the subject of the lately proposed form of government. It has been treated with that freedom which is necessary for the investigation of truth, and with no greater freedom. On such a subject, extensive in its nature, and important in its consequences, the examination has necessarily been long, and the topicks treated of have been various. We have been obliged to take a cursory, but not inaccurate view of the circumstances of mankind under the different forms of government to support the different parts of our argument. Permit me now to bring into one view the principal propositions on which the reasoning depends.

4.6.39 It is shewn from the example of the most commercial republick of antiquity, which was never disturbed by a sedition for above seven hundred years, and at last yielded after a violent struggle to a foreign enemy, as well as from the experience of our own country for a century and an half; that the republican, more than any other form of government is made of durable materials. It is shewn from a variety of proof, that one consolidated government is inapplicable to a great extent of country; is unfriendly to the rights both of persons and property, which rights always adhere together; and that being contrary to the interest of the extreme of an empire, such a government can be supported only by power, and that commerce is the true bond of union for a free state. It is shewn from a comparison of the different parts of the proposed plan, that it is such a consolidated government.

4.6.40 By article 3, section 2, Congress are empowered to appoint courts with authority to try civil causes of every kind, and even offences against particular states; by the last clause of article 1, section 8, which defines their legislative powers, they are authorized to make laws for carrying into execution all the "powers vested by this constitution in the government of the United States, or in *any department* or officer thereof;" and by article 6, the judges in every state are to be bound by the laws of Congress. It is therefore a complete consolidation of all the states into one, however diverse the parts of it may be. It is also shewn that it will operate unequally in the different states, taking from some of them a greater share of wealth; that in this last respect it will operate more to the injury of this commonwealth than of any state in the union; and that by reason of its inequality it is subversive of the principles of a free government, which requires every part to contribute an equal proportion. For all these reasons this system ought to be rejected, even if no better plan was proposed in the room of it. In case of a rejection we must remain as we are, with trade extending, resources opening, settlements enlarging, manufactures increasing, and publick debts diminishing by fair payment. These are mighty blessings, and not to be lost by the hasty adoption of a new system. But great as these benefits are, which we derive from our present system, it has been shewn, that they may be increased by giving Congress a limited power to regulate trade, and

assigning to them those branches of the impost on our foreign trade only, which shall be equal to our proportion of their present annual demands. While the interest is thus provided for, the sale of our lands in a very few years will pay the principal, and the other resources of the state will pay our own debt. The present mode of assessing the continental tax is regulated by the extent of landed property in each state. By this rule the Massachusetts has to pay one eighth. If we adopt the new system, we shall surrender the whole of our impost and excise, which probably amount to a third of those duties of the whole continent, and must come in for about a sixth part of the remaining debt. By this means we shall be deprived of the benefit arising from the largeness of our loans to the continent, shall lose our ability to satisfy the just demands on the state. Under the limitations of revenue and commercial regulation contained in these papers, the balance will be largely in our favour; the importance of the great states will be preserved, and the publick creditors both of the continent and state will be satisfied without burdening the people. For a more concise view of my proposal, I have thrown it into the form of a resolve supposed to be passed by the convention which is shortly to set in this town.

"Commonwealth of Massachusetts. 4.6.41

Resolved, That the form of government lately proposed by a federal convention, held in the city of Philadelphia, is so far injurious to the interests of this commonwealth, that we are constrained by fidelity to our constituents to reject it; and we do hereby reject the said proposed form and every part thereof. But in order that the union of these states may, as far as possible, be promoted, and the federal business as little obstructed as may be, we do agree on the part of this commonwealth, that the following addition be made to the present articles of confederation.

"XIV. The United States shall have power to regulate the intercou[r]se 4.6.42 between these states and foreign dominions, under the following restrictions; viz 1st. No treaty, ordinance, or law shall alienate the whole or part of any state, without the consent of the legislature of such state. 2d. The United States shall not by treaty or otherwise give a preference to the ports of one state over those of another; Nor, 3d create any monopolies or exclusive companies; Nor, 4th, extend the privileges of citizenship to any foreigner. And for the more convenient exercise of the powers hereby and by the former articles given, the United S[t]ates shall have authority to constitute judicatories, whether supreme or subordinate, with power to try all piracies and felonies done on the high seas, and also all civil causes in which a foreign state, or subject thereof actually resident in a foreign country and not being British absentees, shall be one of the parties. They shall also have authority to try all causes in which ambassadours shall be concerned. All these trials shall be by jury and in some sea-port town. All imposts levied by Congress on trade shall be confined to foreign produce or foreign manufactures imported, and to foreign ships trading in our harbours,

and all their absolute prohibitions shall be confined to the same articles. All imposts and confiscations shall be to the use of the state in which they shall accrue, excepting in such branches as shall be assigned by any state as a fund for defraying their proportion of the continental. And no powers shall be exercised by Congress but such as are expressly given by this and the former articles. And we hereby authorize our delegates in Congress to sign and ratify an article in the foregoing form and words, without any further act of this state for that purpose, provided the other states shall accede to this proposition on their part on or before the first day of January, which will be in the year of our Lord 1790. All matters of revenue being under the controul of the legislature, we reccommend to the general court of this commonwealth, to devise, as early as may be, such funds arising from such branches of foreign commerce, as shall be equal to our part of the current charges of the continent, and to put Congress in possession of the revenue arising therefrom, with a right to collect it, during such term as shall appear to be necessary for the payment of the principal of their debt, by the sale of the western lands."

4.6.43 By such an explicit declaration of the powers given to Congress, we shall provide for all federal purposes, and shall at the same time secure our rights. It is easier to amend the old confederation, defective as it has been represented, than it is to correct the new form. For with what ever view it was framed, truth constrains me to say, that it is insiduous in its form, and ruinous in its tendency. Under the pretence of different branches of the legislature, the members will in fact be chosen from the same general description of citizens. The advantages of a check will be lost, while we shall be continually exposed to the cabals and corruption of a British election. There cannot be a more eligible mode than the present, for appointing members of Congress, nor more effectual checks provided than our separate state governments, nor any system so little expensive, in case of our adopting the resolve just stated, or even continuing as we are. We shall in that case avoid all the inconvenience of concurrent jurisdictions, we shall avoid the expensive and useless establishments of the Philadelphia proposition, we shall preserve our constitution and liberty, and we shall provide for all such institutions as will be useful. Surely then you cannot hesitate, whether you will chuse freedom or servitude. The object is now well defined. By adopting the form proposed by the convention, you will have the derision of foreigners, internal misery, and the anathemas of posterity. By amending the present confederation, and granting limited powers to Congress, you secure the admiration of strangers, internal happiness, and the blessings and prosperity of all succeeding generations. Be wise then, and by preserving your freedom, prove, that Heaven bestowed it not in vain. Many will be the efforts to delude the convention. The mode of judging is itself suspicious, as being contrary to the antient and established usage of the commonwealth. But since this mode is adopted, we trust, that the numbers [members?] of

that venerable assembly will not so much regard the greatness of their power, as the sense and interest of their constituents. And they will do well to remember that even a mistake in adopting it, will be destructive, while no evils can arise from a total, and much less, probably, from such a partial rejection as we have proposed.

I have now gone through my reasonings on this momentous subject, and 4.6.44
have stated the facts and deductions from them, which you will verify for yourselves. Personal interest was not my object, or I should have pursued a different line of conduct. Though I conceived that a man who owes allegiance to the state is bound, on all important occasions, to propose such inquiries as tend to promote the publick good; yet I did not imagine it to be any part of my duty to present myself to the fury of those, who appear to have other ends in view. For this cause, and for this only, I have chosen a feigned signature. At present all the reports concerning the writer of these papers are merely conjectural. I should have been ashamed of my system if it had needed such feeble support as the character of individuals. It stands on the firm ground of the experience of mankind. I cannot conclude this long disquisition better than with a caution derived from the words of inspiration. *Discern the things of your peace now in the days thereof, before they be hidden from your eyes.*[20]

Agrippa.

XI

8 January 1788

To the People.

My last Address contained the outlines of a system fully adequate to all the 4.6.45
useful purposes of the union. Its object is to raise a sufficient revenue from the foreign trade, and the sale of our publick lands, to satisfy all the publick exigencies, and to encourage, at the same time, our internal industry and manufactures. It also secures each state in its own separate rights, while the continental concerns are thrown into the general department. The only deficiencies that I have been able to discover in the plan, and in the view of federalists they are very great ones, are, that it does not allow the interference of Congress in the domestick concerns of the state, and that it does not render our national councils so liable to foreign influence. The first of these articles tends to guard us from that infinite multiplication of officers which the report of the Convention of Philadelphia proposes. With regard to the second, it is evidently not of much importance to any foreign nation to purchase, at a very high price, a majority of votes in an assembly, whose

members are continually exposed to a recall. But give those members a right to sit six, or even two, years, with such extensive powers as the new system proposes, and their friendship will be well worth a purchase. This is the only sense in which the Philadelphia system will render us more respectable in the eyes of foreigners. In every other view they lose their respect for us, as it will render us more like their own degraded models. It is a maxim with them, that every man has his price. If, therefore we were to judge of what passes in the hearts of the federalists when they urge us, as they continually do, *to be like other nations*, and when they assign mercenary motives to the opposers of their plan, we should conclude very fairly, that themselves wish to be provided for at the publick expense. However that may be, if we look upon the men we shall find some of their leaders to have formed pretty strong attachments to foreign nations. Whether those attachments arose from their being educated under a royal government, from a former unfortunate mistake in politicks, or from the agencies for foreigners, or any other cause, is not in my province to determine. But certain it is, that some of the principal fomenters of this plan have never shewn themselves capable of that generous system of policy which is founded in the affections of freemen. Power and high life are their idols, and national funds are necessary to support them.

4.6.46 Some of the principal powers of Europe have already entered into treaties with us, and that some of the rest have not done it, is not owing, as is falsely pretended, to the want of power in Congress. Holland never found any difficulty of this kind from the multitude of sovereignties in that country, which must all be consulted on such an occasion. The resentment of Great Britain for our victories in the late war has induced that power to restrain our intercourse with their subjects. Probably an hope, the only solace of the wretched, that their affairs would take a more favourable turn on this continent, has had some influence on their proceedings. All their restrictions have answered the end of securing our independence by driving us into many valuable manufactures. Their own colonies in the mean time have languished for want of an intercourse with these states. The new settlement in Nova Scotia has miserably decayed, and the West India Islands have suffered for want of our supplies, and by the loss of our market. This has affected the revenue; and however contemptuously some men may affect to speak of our trade, the supply of six millions of people is an object worth the attention of any nation upon earth. Interest in such a nation as Britain will surmount their resentment. However their pride may be stung, they will pursue after wealth. Increase of revenue to a nation overwhelmed with a debt of near *two hundred and ninety millions* sterling is an object to which little piques must give way; and there is no doubt that their interest consists in securing as much of our trade as they can.

4.6.47 These are topicks from which are drawn some of the most plausible reasons that have been given by the federalists in favour of their plan, as

derived from the sentiments of foreigners. We have weighed them and found them wanting. That they had not themselves full confidence in their own reasons at Philadelphia is evident from the method they took to bias the state Convention. Mess'rs Wilson and M'Kean, two Scottish names, were repeatedly worsted in the argument. To make amends for their own incapacity, the gallery was filled with a rabble, who shouted their applause, and these heroes of aristocracy were not ashamed, though modesty is their national virtue, to vindicate such a violation of decency:[21] Means not less criminal, but not so flagrantly indecent, have been frequently mentioned among us to secure a majority. But those who vote for a price, can never sanctify wrong, and treason will still retain its deformity.

Agrippa.

XII[22]

11 January 1788

To the Massachusetts Convention.

Gentlemen,

Suffer an individual to lay before you his contemplations on the great subject that now engages your attention. To you it belongs, and may Heaven direct your judgment, to decide on the happiness of all future generations as well as the present. 4.6.48

It is universally agreed, that the object of every just government is to render the people happy, by securing their persons and possessions from wrong. To this end it is necessary that there should be local laws and institutions; for a people inhabiting various climates will unavoidably have local habits and different modes of life, and these must be consulted in making the laws. It is much easier to adapt the laws to the manners of the people, than to make manners conform to laws. The idle and dissolute inhabitants of the south, require a different regimen from the sober and active people of the north. Hence, among other reasons, is derived the necessity of local governments, who may enact, repeal, or alter regulations as the circumstances of each part of the empire may require. This would be the case, even if a very great state was to be settled at once. But it becomes still more needful, when the local manners are formed, and usages sanctified by the practice of a century and an half. In such a case, to attempt to reduce all to one standard, is absurd in itself, and cannot be done but upon the principle of power, which debases the people, and renders them unhappy, till all dignity of character is put away. Many circumstances render us an essentially different people from the inhabitants of the southern states. The

unequal distribution of property, the toleration of slavery, the ignorance and poverty of the lower classes, the softness of the climate, and dissoluteness of manners, mark their character. Among us, the care that is taken of education, small and nearly equal estates, equality of rights, and the severity of the climate, renders the people active, industrious and sober. Attention to religion and good morals is a distinguishing trait in our character. It is plain, therefore, that we require for our regulation laws, which will not suit the circumstances of our southern brethren, and the laws made for them would not apply to us.[23] Unhappiness would be the uniform product of such laws; for no state can be happy, when the laws contradict the general habits of the people, nor can any state retain its freedom, while there is a power to make and enforce such laws. We may go further, and say, that it is impossible for any single legislature so fully to comprehend the circumstances of the different parts of a very extensive dominion, as to make laws adapted to those circumstances. Hence arises in most nations of extensive territory, the necessity of armies, to cure the defect of the laws. It is actually under the pressure of such an absurd government, that the Spanish provinces have groaned for near three centuries; and such will be our misfortune and degradation, if we ever submit to have all the business of the empire done by one legislature. The contrary principle of local legislation by the representatives of the people, who alone are to be governed by the laws, has raised us to our present greatness; and an attempt on the part of Great-Britain, to invade this right, brought on the revolution, which gave us a separate rank among the nations. We even declared, that we would not be represented in the national legislature, because one assembly was not adequate to the purposes of internal legislation and taxation.[24]

Agrippa.

(*Remainder next Tuesday.*)

14 January 1788

(*concluded from our last*)[25]

To the Massachusetts Convention.

Gentlemen,

4.6.49 The question then arises, what is the kind of government best adapted to the object of securing our persons and possessions from violence? I answer, a FEDERAL REPUBLICK. By this kind of government each state reserves to itself the right of making and altering its laws for internal regulation, and the right of executing those laws without any external restraint, while the general concerns of the empire are committed to an assembly of delegates, each

accountable to his own constituents. This is the happy form under which we live, and which seems to mark us out as a people chosen of God. No instance can be produced of any other kind of government so stable and energetick as the republican. The objection drawn from the Greek and Roman states does not apply to the question.[26] Republicanism appears there in its most disadvantageous form. Arts and domestick employments were generally commited to slaves, while war was almost the only business worthy of a citizen. Hence arose their internal dissensions. Still they exhibited proofs of legislative wisdom and judicial integrity hardly to be found among their monarchick neighbours. On the other hand we find Carthage cultivating commerce, and extending her dominions for the long space of seven centuries, during which term the internal tranquillity was never disturbed by her citizens. Her national power was so respectable, that for a long time it was doubtful whether Carthage or Rome should rule. In the form of their government they bore a strong resemblance to each other. Rome might be reckoned a free state for about four hundred and fifty years. We have then the true line of distinction between those two nations, and a strong proof of the hardy materials which compose a republican government. If there was no other proofs we might with impartial judges risk the issue upon this alone. But our proof rests not here. The present state of Europe, and the vigour and tranquillity of our own governments, after experiencing this form for a century and an half, are decided proofs in favour of those governments which encourage commerce. A comparison of our own country, first with Europe and then with the other parts of the world, will prove, beyond a doubt, that the greatest share of freedom is enjoyed by the citizens, so much more does commerce flourish. The reason is, that every citizen has an influence in making the laws, and thus they are conformed to the general interests of the state; but in every other kind of government they are frequently made in favour of a part of the community at the expense of the rest.

The argument against republicks, as it is derived from the Greek and Roman states, is unfair. It goes on the idea that no other government is subject to be disturbed. As well might we conclude, that a limited monarchy is unstable, because, that under the feudal system, the nobles frequently made war upon their king, and disturbed the publick peace. We find, however, in practice, that limited monarchy is more friendly to commerce, because more friendly to the rights of the subject, than an absolute government; and that it is more liable to be disturbed than a republick, because less friendly to trade and the rights of individuals. There cannot, from the history of mankind, be produced an instance of rapid growth in extent, in numbers, in arts, and in trade, that will bear any comparison with our country. This is owing to what the friends of the new system, and the enemies of the revolution, for I take them to be nearly the same, would term *our extreme liberty*. Already, have our ships visited every part of the world, and brought us their commodities in greater perfection, and at a more moderate price, than we

4.6.50

ever before experienced. The ships of other nations crowd to our ports, seeking an intercourse with us. All the estimates of every party make the balance of trade for the present year to be largely in our favour. Already have some very useful, and some elegant manufactures got established among us, so that our country every day is becoming independent in her resources. Two thirds of the continental debt has been paid since the war, and we are in alliance with some of the most respectable powers of Europe. The western lands, won from Britain by the sword, are an ample fund for the principal of all our publick debts; and every new sale excites that manly pride which is essential to national virtue. All this happiness arises from the freedom of our institutions and the limitted nature of our government; a government that is respected from principles of affection, and obeyed with alacrity. The sovereigns of the old world are frequently, though surrounded with armies, treated with insult; and the despotick monarchies of the east, are the most fluctuating, oppressive and uncertain governments of any form hitherto invented. These considerations are sufficient to establish the excellence of our own form, and the goodness of our prospects.

4.6.51 Let us now consider the probable effects of a consolidation of the separate states into one mass; for the new system extends so far. Many ingenious explanations have been given of it; but there is this defect, that they are drawn from maxims of the common law, while the system itself cannot be bound by any such maxims. A legislative assembly has an inherent right to alter the common law, and to abolish any of its principles, which are not particularly guarded in the constitution. Any system therefore which appoints a legislature without any reservation of the rights of individuals, surrender[s] all power in every branch of legislation to the government. The universal practice of every government proves the justness of this remark; for in every doubtful case it is an established rule to decide in favour of authority. The new system is, therefore, in one respect at least, essentially inferiour to our state constitutions. There is no bill of rights, and consequently a continental law may controul any of those principles, which we consider at present as sacred; while not one of those points, in which it is said that the separate governments misapply their power, is guarded. Tender acts and the coinage of money stand on the same footing of a consolidation of power. It is a mere fallacy, invented by the deceptive powers of mr. Wilson, that what rights are not given are reserved. The contrary has already been shewn.[27] But to put this matter of legislation out of all doubt, let us compare together some parts of the book; for being an independent system, this is the only way to ascertain its meaning.

4.6.52 In article III, section 2, it is declared, that "the judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States, and treaties made or which shall be made under their authority." Among the cases arising under this new constitution are reckoned, "all controversies between citizens of different states," which include all kinds

of civil causes between those parties. The giving Congress a power to appoint courts for such a purpose is as much, there being no stipulation to the contrary, giving them power to legislate for such causes, as giving them a right to raise an army, is giving them a right to direct the operations of the army when raised. But it is not left to implication. The last clause of article I, section 8, expressly gives them power "to make all laws which shall be needful and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof." It is, therefore, as plain as words can make it, that they have a right by this proposed form to legislate for all kinds of causes respecting property between citizens of different states. That this power extends to all cases between citizens of the same state, is evident, from the sixth article, which declares all continental laws and treaties to be the *supreme law* of the land, and that all state judges are bound thereby, *"any thing in the constitution or laws of any state to the contrary notwithstanding."* If this is not binding the judges of the separate states in their own office, by continental rules, it is perfect nonsense. There is then a complete consolidation of the legislative powers in all cases respecting property. This power extends to all cases between a state and citizens of another state. Hence a citizen, possessed of the notes of another state, may bring his action, and there is no limitation that the execution shall be levied on the publick property of the state but the property of individuals is liable. This is a foundation for endless confusion and discord. This, right to try causes between a state and citizens of another state, involves in it all criminal causes; and a man who has accidentally transgressed the laws of another state, must be transported, with all his witnesses, to a third state, to be tried. He must be ruined to prove his innocence. These are necessary parts of the new system, and it will never be complete till they are reduced to practice. They effectually prove a consolidation of the states, and we have before shewn the ruinous tendency of such a measure.[28]

By sect. 8, of article 1, Congress are to have the unlimitted right to regulate commerce, external and *internal,* and may therefore create monopolies which have been universally injurious to all the subjects of the countries that have adopted them, excepting the monopolists themselves. They have also the unlimited right to imposts and all kinds of taxes as well to levy as to collect them.[29] They have indeed very nearly the same powers claimed formerly by the British parliament. Can we have so soon forgot our glorious struggle with that power, as to think a moment of surrendering it now? It makes no difference in principle whether the national assembly was elected for seven years or for six. In both cases we should vote to great disadvantage, and therefore ought never to agree to such an article. Let us make provision for the payment of the interest of our part of the debt, and we shall be fairly acquitted. Let the fund be an impost on our foreign trade, and we shall encourage our manufactures. But if we surrender the un- 4.6.53

limitted right to regulate trade and levy taxes, imposts will oppress our foreign trade for the benefit of other states, while excises and taxes will discourage our internal industry. The right to regulate trade, without any limitations, will, as certainly as it is granted, transfer the trade of this state to Pennsylvania.[30] That will be the seat of business and of wealth, while the extremes of the empire will, like Ireland and Scotland, be drained to fatten an overgrown capital. Under our present equal advantages, the citizens of this state come in for their full share of commercial profits. Surrender the rights of taxation and commercial regulation, and the landed states at the southward will all be interested in draining our resources; for whatever can be got by impost on our trade and excises on our manufactures, will be considered as so much saved to a state inhabited by planters. All savings of this sort ought surely to be made in favour of our own state; and we ought never to surrender the unlimitted powers of revenue and trade to uncommercial people. If we do, the glory of the state from that moment departs, never to return.

4.6.54 The safety of our constitutional rights consists in having the business of government lodged in different departments, and in having each part well defined. By this means each branch is kept within the constitutional limits. Never was a fairer line of distinction than what may be easily drawn between the continental and state governments. The latter provide for all cases, whether civil or criminal, that can happen ashore, because all such causes must arise within the limits of some state. Transactions between citizens may all be fairly included in this idea, even although they should arise in passing by water from one state to another. But the intercourse between us and foreign nations, properly forms the department of Congress. They should have the power of regulating trade under such limitations as should render their laws equal. They should have the right of war and peace, saving the equality of rights, and the territory of each state. But the power of naturalization and internal regulation should not be given them. To give my scheme a more systematick appearance, I have thrown it into the form of a resolve, which is submitted to your wisdom for amendment, but not as being perfect.

4.6.55 "Resolved, that the form of government proposed by the federal convention, lately held in Philadelphia, be rejected on the part of this commonwealth; and that our delegates in Congress are hereby authorised to propose on the part of this commonwealth, and, if the other states for themselves agree thereto, to sign an article of confederation, as an addition to the present articles, in the form following, provided such agreement be made on or before the first day of January, which will be in the year of our Lord 1790; the said article shall have the same force and effect as if it had been inserted in the original confederation, and is to be construed consistently with the clause in the former articles, which restrains the United States from exercising such powers as are not expressly given.

"XIV. The United States shall have power to regulate, whether by treaty, ordinance, or law, the intercourse between these states and foreign dominions and countries, under the following restrictions. No treaty, ordinance, or law shall give a preference to the ports of one state over those of another; nor 2d. impair the territory or internal authority of any state; nor 3d. create any monopolies or exclusive companies; nor 4th. naturalise any foreigners. All their imposts and prohibitions shall be confined to foreign produce and manufactures imported, and to foreign ships trading in our harbours. All imposts and confiscations shall be to the use of the state where they shall accrue, excepting only such branches of impost, as shall be assigned by the separate states to Congress for a fund to defray the interest of their debt, and their current charges. In order the more effectually to execute this and the former articles, Congress shall have authority to appoint courts, supreme & subordinate, with power to try all crimes, not relating to state securities, between any foreign state, or subject of such state, actually residing in a foreign country, and not being an absentee or person who has alienated himself from these states on the one part, and any of the United States or citizens thereof on the other part; also all causes in which foreign ambassadours or other foreign ministers resident here shall be immediately concerned, respecting the jurisdiction or immunities only. And the Congress shall have authority to execute the judgment of such courts by their own affairs. Piracies and felonies committed on the high seas shall also belong to the department of Congress for them to define, try, and punish, in the same manner as the other causes shall be defined, tried, and determined. All the before-mentioned causes shall be tried by jury and in some sea-port town. And it is recommended to the general court at their next meeting to provide and put Congress in possession of funds arising from foreign imports and ships sufficient to defray our share of the present annual expenses of the continent." 4.6.56

Such a resolve explicitly limitting the powers granted is the farthest we can proceed with safety. The scheme of accepting the report of the Convention, and amending it afterwards, is merely delusive. There is no intention among those who make the proposition to amend it at all. Besides, if they have influence enough to get it accepted in its present form, there is no probability, that they will consent to an alteration when possessed of an unlimited revenue. It is an excellence in our present confederation, that it is extremely difficult to alter it. An unanimous vote of the states is required. But this newly proposed form is founded in injustice, as it proposes that a fictitious consent of only nine states shall be sufficient to establish it. Nobody can suppose that the consent of a state is any thing more than a fiction, in the view of the federalists, after the mobbish influence used over the Pennsylvania convention. The two great leaders of the plan, with a modesty of Scotsmen, placed a rabble in the gallery to applaud their speeches, and thus supplied their want of capacity in the argument. Repeatedly were Wil- 4.6.57

son and M'Kean worsted in the argument by the plain good sense of Findly and Smilie. But reasoning or knowledge had little to do with the federal party. Votes were all they wanted by whatever means obtained. Means not less criminal have been mentioned among us. But votes that are bought can never justify a treasonable conspiracy. Better, far better, would it be to reject the whole, and remain in possession of present advantages. The authority of Congress to decide disputes between states is sufficient to prevent their recurring to hostility: and their different situation, wants and produce is a sufficient foundation for the most friendly intercourse. All the arts of delusion and legal chicanery will be used to elude your vigilance, and obtain a majority. But keeping the constitution of the state, and the publick interest in view, will be your safety.

(We are obliged contrary to our intention, to postpone the remainder of Agrippa till our next.)

18 January 1788

(Concluded from our last.)

To the Massachusetts Convention.

Gentlemen,

4.6.58 To tell us that we ought to look beyond local interests, and judge for the good of the empire, is sapping the foundation of a free state.[31] The first principle of a just government is, that it shall operate equally. The report of the convention is extremely unequal. It takes a larger share of power from some, and from others, a larger share of wealth. The Massachusetts will be obliged to pay near three times their present proportion towards continental charges. The proportion is now ascertained by the quantity of landed property, then it will be by the number of persons. After taking the whole of our standing revenue, by impost and excise, we must still be held to pay a sixth part of the remaining debt. It is evidently a contrivance to help the other states at our expense. Let us then be upon our guard, and do no more than the present confederation obliges. While we make that our beacon we are safe. It was framed by men of extensive knowledge and enlarged ability, at a time when some of the framers of the new plan were hiding in the forests to secure their precious persons. It was framed by men, who were always in favour of a limitted government, and whose endeavours Heaven has crowned with success. It was framed by men, whose idols were not power and high life, but industry and constitutional liberty, and who are now in opposition to this new scheme of oppression. Let us then cherish the old confederation like the apple of our eye. Let us confirm it by such limitted

powers to Congress, and such an enlarged intercourse, founded on commerce and mutual want, with the other states, that our union shall outlast time itself. It is easier to prevent an evil than to cure it. We ought therefore to be cautious of innovations. The intrigues of interested politicians will be used to seduce even the elect. If the vote passes in favour of the plan, the constitutional liberty of our country is gone forever. If the plan should be rejected, we always have it in our power, by a fair vote of the people at large, to extend the authority of Congress. This ought to have been the mode pursued. But our antagonists were afraid to risk it. They knew that the plan would not bear examining. Hence we have seen them insulting all who were in opposition to it, and answering arguments only with abuse. They have threatened and they have insulted the body of the people. But I may venture to appeal to any man of unbiassed judgment, whether his feelings tell him, that there is any danger at all in rejecting the plan. I ask not the palsied or the jaundiced, nor men troubled with bilious or nervous affections, for they can see danger in every thing. But I apply to men who have no personal expectations from a change, and to men in full health. The answer of all such men will be, that never was a better time for deliberation. Let us then, while we have it in our power, secure the happiness and freedom of the present and future ages. To accept of the report of the convention, under the idea that we can alter it when we please, will be sporting with fire-brands[,] arrows and death. It is a system which must have an army to support it, and there can be no redress but by a civil war. If, as the federalists say, there is a necessity of our receiving it, for heaven's sake let our liberties go without our making a formal surrender. Let us at least have the satisfaction of protesting against it, that our own hearts may not reproach us for the meanness of deserting our dearest interests.

Our present system is attended with the inestimable advantage of preventing unnecessary wars. Foreign influence is assuredly smaller in our publick councils, in proportion as the members are subject to be recalled. At present, their right to sit continues no longer than their endeavours to secure the publick interest. It is therefore not an object for any foreign power to give a large price for the friendship of a delegate in Congress. If we adopt the new system, every member will depend upon thirty thousand people, mostly scattered over a large extent of country, for his election. Their distance from the seat of government will make it extremely difficult for the electors to get information of his conduct. If he is faithful to his constituents, his conduct will be misrepresented, in order to defeat his influence at home. Of this we have a recent instance, in the treatment of the dissenting members of the late federal convention. Their fidelity to their constituents was their whole fault. We may reasonably expect similar conduct to be adopted, when we shall have rendered the friendship of the members valuable to foreign powers, by giving them a secure seat in Congress. We shall too have all the intrigues, cabals and bribery practised, which are usual at elections in

4.6.59

Great-Britain. We shall see and lament the want of publick virtue; and we shall see ourselves bought at a publick market, in order to be sold again to the highest bidder. We must be involved in all the quarrels of European powers, and oppressed with expense, merely for the sake of being like the nations round about us. Let us then, with the spirit of freemen, reject the offered system, and treat as it deserves the proposition of men who have departed from their commission; and let us deliver to the rising generation the liberty purchased with our blood.

Agrippa.

XIII

22 January 1788

To the Massachusetts Convention.

Gentlemen,

4.6.60 Truly deplorable, in point of argument, must be that cause, in whose defence persons of acknowledged learning and ability can say nothing pertinent. When they undertake to prove that the person elected is the safest person in the world to controul the exercise of the elective powers of his constituents, we know what dependence is to be had upon their reasonings. Yet we have seen attempts to shew, that the fourth section of the proposed constitution, is an additional security to our rights. It may be such in the view of a Rhode-Island family (I think that state is quoted) who have been for some time in the minority: but it is extraordinary, that an enlightened character in the Massachusetts should undertake to prove, that, from a single instance of abuse in one state, another state ought to resign its liberty.[32] Can any man, in the free exercise of his reason, suppose, that he is perfectly represented in the legislature, when that legislature may at pleasure alter the time, manner, and place of election. By altering the time they may continue a representative during his whole life; by altering the manner, they may fill up the vacancies by their own votes without the consent of the people; and by altering the place, all the elections may be made at the seat of the federal government. Of all the powers of government perhaps this is the most improper to be surrendered. Such an article at once destroys the whole check which the constituents have upon their rulers. I should be less zealous upon this subject, if the power had not been often abused. The senate of Venice, the regencies of Holland, and the British parliament have all abused it. The last have not yet perpetuated themselves; but they have availed themselves repeatedly of popular commotions to continue in power. Even at this day we find attempts to vindicate the usurpation by which they con-

tinued themselves from three to seven years. All the attempts, and many have been made, to return to triennial elections, have proved abortive. These instances are abundantly sufficient to shew with what jealousy this right ought to be guarded. No sovereign on earth need be afraid to declare his crown elective, while the possessor has the right to regulate the time, manner, and place of election. It is vain to tell us, that the proposed government guarantees to each state a republican form. Republicks are divided into democraticks, and aristocraticks. The establishment of an order of nobles, in whom should reside all the power of the state, would be an aristocratick republick. Such has been for five centuries the government of Venice, in which all the energies of government, as well as of individuals, have been cramped by a distressing jealousy that the rulers have of each other. There is nothing of that generous, manly confidence that we see in the democratick republicks of our own country. It is a government of force, attended with perpetual fear of that force. In Great-Britain, since the lengthening of parliaments, all our accounts agree, that their elections are a continued scene of bribery, riot and tumult; often a scene of murder. These are the consequences of choosing seldom, and for extensive districts. When the term is short, nobody will give an high price for a seat. It is an insufficient answer to these objections to say, that there is no power of government but may sometimes be applied to bad purposes. Such a power is of no value unless it is applied to a bad purpose. It ought always to remain with the people. The framers of our state constitution were so jealous of this right, that they fixed the days for election, meeting and dissolving of the legislature, and of the other officers of government. In the proposed constitution not one of these points is guarded, though more numerous and extensive powers are given them than to any state legislature upon the continent. For Congress is at present possessed of the direction of the national force, and most other national powers, and in addition to them are to be vested with all the powers of the individual states, unrestrained by any declarations of right. If these things are for the security of our constitutional liberty, I trust we shall soon see an attempt to prove that the government by an army will be more friendly to liberty than a system founded in consent, and that five states will make a majority of thirteen. The powers of controuling elections, of creating exclusive companies in trade, of internal legislation and taxations ought, upon no account, to be surrendered. I know it is a common complaint, that Congress want more power. But where is the limitted government that does not want it? Ambition is in a governour what money is to a misar—he can never accumulate enough. But it is as true in politicks as in morals, he that is unfaithful in little, will be unfaithful also in much. He who will not exercise the powers he has, will never properly use more extensive powers. The framing entirely new systems, is a work that requires vast attention; and it is much easier to guard an old one. It is infinitely better to reject one that is unfriendly to liberty, and rest for a while satisfied with a

system that is in some measure defective, than to set up a government unfriendly to the rights of states, and to the rights of individuals—one that is undefined in its powers and operations. Such is the government proposed by the federal convention, and such, we trust, you will have the wisdom and firmness to reject.

Agrippa.

XIV

25 January 1788

To the Massachusetts Convention.

Gentlemen,

4.6.61 That the new system, proposed for your adoption, is not founded in argument, but in party spirit, is evident from the whole behaviour of that party, who favour it. The following is a short, but genuine specimen of their reasoning. The South-Carolina legislature have established an unequal representation, and will not alter it: therefore Congress should be invested with an unrestrained power to alter the time, manner and place of electing members into that body. Directly the contrary position should have been inferred. An elected assembly made an improper use of their right to controul elections, therefore such a right ought not to be lodged with them. It will be abused in ten instances, for one in which it will serve any valuable purpose. It is said also that the Rhode Island assembly *intend* to abuse their power in this respect, therefore we should put Congress in a situation to abuse theirs. Surely this is not a kind of reasoning that, in the opinion of any indifferent person, can vindicate the fourth section. Yet we have heard it publickly advanced as being conclusive.

4.6.62 The unlimitted power over trade, domestick as well as foreign, is another power that will more probably be applied to a bad than to a good purpose. That our trade was for the last year much in favour of the commonwealth is agreed by all parties. The freedom that every man, whether his capital is large or small, enjoys, of entering into any branch that pleases him, rouses a spirit of industry and exertion, that is friendly to commerce. It prevents that stagnation of business which generally precedes publick commotions. Nothing ought to be done to restrain this spirit. The unlimitted power over trade, however, is exceedingly apt to injure it.

4.6.63 In most countries of Europe, trade has been confined by exclusive charters. Exclusive companies are, in trade, pretty much like an aristocracy in government, and produce nearly as bad effects. An instance of it we have ourselves experienced. Before the revolution, we carried on no direct trade

to India. The goods imported from that country, came to us through the medium of an exclusive company. Our trade in that quarter is now respectable, and we receive several kinds of their goods at about half the former price.—But the evil of such companies does not terminate there. They always, by the greatness of their capital, have an undue influence on the government.

In a republick, we ought to guard, as much as possible, against the predominance of any particular interest. It is the object of government to protect them all. When commerce is left to take its own course, the advantages of every class will be nearly equal.—But when exclusive privileges are given to any class, it will operate to the weakening of some other class connected with them. 4.6.64

Agrippa.

(Remainder next Tuesday.)

29 January[33]

(Concluded from our last.)

To the Massachusetts Convention

Gentlemen.

This appears to be the universal effect of such establishments. A point of such magnitude ought, then, to be particularly guarded. In some respects it is beneficial that a system of commerce should be established by national authority. But if it is found, as it will upon examination, that most governments establish those companies, from occasional and temporal motives, and that they produce ill effects on government and on trade; the power ought in this respect to be restrained. As we are situated at one extreme of the empire, two or three such companies would annihilate the importance of our seaports, by transferring the trade to Philadelphia. With the decay of trade is connected the depreciation of lands and estates for want of a market for the produce. At present our exports are great and our manufactures are every day rising in importance. It seems to be agreed on all sides, that from the port of Boston only the balance was last year as much as an hundred & fifty thousand pounds in favour of the state; a comparison of that and former years is far from proving the distressed state of commerce. Complaints in that respect are about as well founded as in most others. They are made to serve a present purpose, and when that is accomplished, there is no redress for the disappointment of the publick expectation. It becomes us then to consider well of the powers before we surrender them. There is no recovering them when once given. It is vain to flatter ourselves with the idea, that 4.6.65

three quarters of the members of the new government will ever be for restraining their own power. If it was so easy as the federalists pretend to procure an alteration of the system after its adoption, I think, that it is a circumstance not much in its favour. In order to be perfect a constitution should be permanent. The new system sets out with a violation of the compact between the states. While it is in discussion, we ought to consider, that injustice never can be the basis of a good government. I have met with an account of one government uniformly supported by that principle, and I do not wish even my antagonists to become the subjects of that kingdom.

4.6.66 In answer to the favourite remark of the federalists, that what is not given is reserved, it is sufficient to reply, that the framers of the proposed constitution have themselves thought it necessary to make an explicit reservation of the power to grant titles of nobility.[34] Why did they reserve this point, if it would not otherwise have been given up? The conversation of the party is in direct opposition to any design ever to alter the system in favour of the liberties of the people. It is said that a constitution is itself a bill of rights. The fallacy of this position is easily shewn, but the length of this paper makes it necessary to postpone that part of the argument. At present we shall only observe, that a constitution does not necessarily point out any other dependencies than of the parts of the government upon each other, and not those between the government and people. Has Venice no constitution? Yet the people have no share in the government.

Agrippa.

XV

29 January 1788[35]

To the Massachusetts Convention.

Gentlemen,

4.6.67 As it is essentially necessary to the happiness of a free people, that the constitution of government should be established in principles of truth, I have endeavoured, in a series of papers, to discuss the proposed form, with that degree of freedom which becomes a faithful citizen of the commonwealth. It must be obvious to the most careless observer, that the friends of the new plan appear to have nothing more in view than to establish it by a popular current, without any regard to the truth of its principles. Propositions, novel, erroneous and dangerous, are boldly advanced to support a system, which does not appear to be founded in, but in every instance to contradict, the experience of mankind. We are told, that a constitution is in itself a bill of rights; that all power not expressly given is reserved; that no

powers are given to the new government which are not already vested in the state governments; and that it is for the security of liberty that the persons elected should have the absolute controul over the time, manner and place of election. These, and an hundred other things of the like kind, though they have gained the hasty assent of men, respectable for learning and ability, are false in themselves, and invented merely to serve a present purpose. This will, I trust, clearly appear from the following considerations.

It is common to consider man at first as in a state of nature, separate from all society. The only historical evidence, that the human species ever actually existed in this state, is derived from the book of Gen. There, it is said, that Adam remained a while alone. While the whole species was comprehended in his person was the only instance in which this supposed state of nature really existed. Ever since the completion of the first pair, mankind appear as natural to associate with their own species, as animals of any other kind herd together. Wherever we meet with their settlements, they are found in clans. We are therefore justified in saying, that a state of society is the natural state of man. Wherever we find a settlement of men, we find also some appearance of government. The state of government is therefore as natural to mankind as a state of society. Government and society appear to be co-eval. The most rude and artless form of government is probably the most ancient. This we find to be practised among the Indian tribes in America. With them the whole authority of government is vested in the whole tribe. Individuals depend upon their reputation of valour and wisdom to give them influence. Their government is genuinely democratical. This was probably the first kind of government among mankind, as we meet with no mention of any other kind, till royalty was introduced in the person of Nimrod. Immediately after that time, the Asiatick nations seem to have departed from the simple democracy, which is still retained by their American brethren, and universally adopted the kingly form. We do indeed meet with some vague rumors of an aristocracy in India so late as the time of Alexander the great. But such stories are altogether uncertain and improbable. For in the time of Abraham, who lived about sixteen hundred years before Alexander, all the little nations mentioned in the Mosaick history appear to be governed by kings. It does not appear from any accounts of the Asiatick kingdoms that they have practised at all upon the idea of a limitted monarchy. The whole power of society has been delegated to the kings; and though they may be said to have constitutions of government, because the succession to the crown is limitted by certain rules, yet the people are not benefitted by their constitutions, and enjoy no share of civil liberty. The first attempt to reduce republicanism to a system, appears to be made by Moses when he led the Israelites out of Egypt. This government stood a considerable time, about five centuries, till in a frenzy the people demanded a king, that they might resemble the nations about them. They were dissatisfied with their judges, and instead of changing the administration, they madly

4.6.68

changed their constitution. However they might flatter themselves with the idea, that an high spirited people could get the power back again when they pleased; they never did get it back, and they fared like the nations about them. Their kings tyrannized over them for some centuries, till they fell under a foreign yoke. This is the history of that nation. With a change of names, it describes the progress of political changes in other countries. The people are dazzled with the splendour of distant monarchies, and a desire to share their glory induces them to sacrifice their domestick happiness.

4.6.69 From this general view of the state of mankind it appears, that all the power of government originally reside in the body of the people; and that when they appoint certain persons to administer the government, they delegate all the powers of government not expressly reserved. Hence it appears, that a constitution does not in itself imply any more than a declaration of the relation which the different parts of the government bear to each other, but does not in any degree imply security to the rights of individuals. This has been the uniform practice. In all doubtful cases the decision is in favour of the government. It is therefore impertinent to ask by what right government exercises powers not expressly delegated. Mr. Wilson, the great oracle of federalism, acknowledges, in his speech to the Philadelphians, the truth of these remarks, as they respect the state governments, but attempts to set up a distinction between them and the continental government.[36] To any body who will be at the trouble to read the new system, it is evidently in the same situation as the state constitutions now possess. It is a compact among the *people* for the purposes of government, and not a compact between states. It begins in the name of the people and not of the states.

4.6.70 It has been shown in the course of this paper, that when people institute government, they of course delegate all rights not expressly reserved. In our state constitution the bill of rights consists of thirty articles. It is evident therefore that the new constitution proposes to delegate greater powers than are granted to our own government, sanguine as the person was who denied it. The complaints against the separate governments, even by the friends of the new plan, are not that they have not power enough, but that they are disposed to make a bad use of what power they have. Surely then they reason badly, when they purpose to set up a government possess'd of much more extensive powers than the present, and subject to much smaller checks.

4.6.71 Bills of rights, reserved by authority of the people, are, I believe, peculiar to America. A careful observance of the abuse practised in other countries has had its just effect by inducing our people to guard against them. We find the happiest consequences to flow from it. The separate governments know their powers, their objects, and operations. We are therefore not perpetually tormented with new experiments. For a single instance of abuse among us there are thousands in other countries. On the other hand, the people know their rights, and feel happy in the possession of their freedom, both civil and

political. Active industry is the consequence of their security; and within one year the circumstances of the state and of individuals have improved to a degree never before known in this commonwealth. Though our bill of rights does not, perhaps, contain all the cases in which power might be safely reserved, yet it affords a protection to the persons and possessions of individuals not known in any foreign country. In some respects the power of government is a little too confined. In many other countries we find the people resisting their governours for exercising their power in an unaccustomed mode. But for want of a bill of rights the resistance is always by the principles of their government, a rebellion which nothing but success can justify. In our constitution we have aimed at delegating the necessary powers of government and confining their operation to beneficial purposes. At present we appear to have come very near the truth. Let us therefore have wisdom and virtue enough to preserve it inviolate. It is a stale contrivance to get the people into a passion, in order to make them sacrifice their liberty. Repentance always comes, but it comes too late. Let us not flatter ourselves that we shall always have good men to govern us. If we endeavour to be like other nations we shall have more bad men than good ones to exercise extensive powers. That circumstance alone will corrupt them. While they fancy themselves the vicegerants of God, they will resemble him only in power, but will always depart from his wisdom and goodness.

Agrippa.

XVI

5 February 1788

To the Massachusetts Convention.

Gentlemen,

In my last address I ascertained, from historical records, the following principles: that, in the original state of government, the whole power resides in the whole body of the nation; that when a people appoint certain persons to govern them, they delegate their whole power; that a constitution is not itself a bill of rights; and that, whatever is the form of government, a bill of rights is essential to the security of the persons and property of the people. It is an idea favourable to the interest of mankind at large, that government is founded in compact. Several instances may be produced of it; but none is more remarkable than our own. In general I have chosen to apply to such facts as are in the reach of my readers. For this purpose I have chiefly confined myself to examples drawn from the history of our own country, 4.6.72

and to the old testament. It is in the power of every reader to verify examples thus substantiated. Even in the remarkable argument on the fourth section, relative to the power over election, I was far from stating the worst of it, as it respects the adverse party. A gentleman, respectable in many points, but more especially for his systematick and perspicuous reasoning in his profession, has repeatedly stated to the Convention among his reasons in favour of that section, that *the Rhode-Island assembly have for a considerable time past had a bill lying on their table for altering the manner of elections for representatives in that state*.[37] He has stated it with all the zeal of a person who believed his argument to be a good one. But surely a *bill lying on a table* can never be considered as any more than an intention to pass it, and nobody pretends that it ever actually did pass. It is in strictness only the intention of a part of the assembly, for nobody can aver that it ever will pass.* I write not with an intention to deceive, but that the whole argument may be stated fairly. Much eloquence and ingenuity have been employed in shewing that side of the argument in favour of the proposed constitution; but it ought to be considered that if we accept it upon mere verbal explanations, we shall find ourselves deceived. I appeal to the knowledge of every one, if it does not frequently happen, that a law is interpreted in practice very differently from the intention of the legislature. Hence arises the necessity of acts to amend and explain former acts. This is not an inconvenience in the common and ordinary business of legislation; but is a great one in a constitution. A constitution is a legislative act of the whole people. It is an excellence that it should be permanent, otherwise we are exposed to perpetual insecurity from the fluctuation of government. We should be in the same situation as under absolute government, sometimes exposed to the pressure of greater, and sometimes unprotected by the weaker power in the sovereign.

4.6.73 It is now generally understood, that it is for the security of the people, that the powers of the government should be lodged in different branches. By this means publick business will go on when they all agree, and stop when they disagree. The advantage of checks in government is thus manifested, where the concurrence of different branches is necessary to the same act, but the advantage of a division of business is advantageous in other respects.[39] As in every extensive empire, local laws are necessary to suit the different interests, no single legislature is adequate to the business. All human capacities are limited to a narrow space; and as no individual is capable of practising a great variety of trades, no single legislature is capable of managing all the variety of national and state concerns. Even if a legisla-

*A writer in the Gazette of 29th January, under the signature of Captain McDaniel having with civility and apparent candour, called for an explanation of what was said in one of my former papers, I have chosen to mention him with respect, as the only one of my reviewers who deserves an answer.[38]

ture was capable of it, the business of the judicial department must, from the same cause, be slovenly done. Hence arises the necessity of a division of the business into national and local. Each department ought to have all the powers necessary for executing its own business, under such limitations as tend to secure us from any inequality in the operations of government. I know it is often asked against whom in a government by representation is a bill of rights to secure us? I answer, that such a government is indeed a government by ourselves; but as a just government protects all alike, it is necessary that the sober and industrious part of the community should be defended from the rapacity and violence of the vicious and idle. A bill of rights therefore, ought to set forth the purposes for which the compact is made, and serves to secure the minority against the usurpation and tyranny of the majority. It is a just observation of his excellency, doctor Adams in his learned defence of the American constitutions, that unbridled passions produce the same effect whether in a king, nobility, or a mob.[40] The experience of all mankind has proved the prevalence of a disposition to use power wantonly. It is therefore as necessary to defend an individual against the majority in a republick as against the king in a monarchy. Our state constitution has wisely guarded this point. The present confederation has also done it.

I confess that I have yet seen no sufficient reason for not amending the confederation, though I have weighed the argument with candour. I think it would be much easier to amend it than the new constitution. But this is a point on which men of very respectable character differ. There is another point in which nearly all agree, and that is, that the new constitution would be better in many respects if it had been differently framed. Here the question is not so much what the amendments ought to be, as in what manner they shall be made; whether they shall be made as conditions of our accepting the constitution, or whether we shall first accept it, and then try to amend it. I can hardly conceive that it should seriously be made a question. If the first question, whether we will receive it as it stands, be negatived, as it undoubtedly ought to be, while the conviction remains that amendments are necessary; the next question will be, what amendments shall be made? Here permit an individual, who glories in being a citizen of Massachusetts, and who is anxious that the[her?] character may remain undiminished, to propose such articles as appear to him necessary for preserving the rights of the state. He means not to retract any thing with regard to the expediency of amending the old confederation, and rejecting the new one totally; but only to make a proposition which he thinks comprehends the general idea of all parties. If the new constitution means no more than the friends of it acknowledge, they certainly can have no objection to affixing a declaration in favour of the rights of states and of citizens, especially as a majority of the states have not yet voted upon it— 4.6.74

4.6.75 "Resolved, that the constitution lately proposed for the United States be received only upon the following conditions:

"1. Congress shall have no power to alter the time, place or manner of elections, nor any authority over elections, otherwise than by fining such state as shall neglect to send its representatives or senators, a sum not exceeding the expense of supporting its representatives or senators one year.

"2. Congress shall not have the power of regulating the intercourse between the states, nor to levy any direct tax on polls or estates," or any excise.

"3. Congress shall not have power to try causes between a state and citizens of another state, nor between citizens of different states; nor to make any laws relative to the transfer of property between those parties, nor any other matter which shall originate in the body of any state.

"4. It shall be left to every state to make and execute its own laws, except laws impairing contracts, which shall not be made at all.

"5. Congress shall not incorporate any trading companies, nor alienate the territory of any state. And no treaty, ordinance or law of the United States shall be valid for these purposes.

"6. Each state shall have the command of its own militia.

"7. No continental army shall come within the limits of any state, other than garrison to guard the publick stores, without the consent of such states in time of peace.

"8. The president shall be chosen annually and shall serve but one year, and shall be chosen successively from the different states, changing every year.

"9. The judicial department shall be confined to cases in which ambassadours are concerned, to cases depending upon treaties, to offences committed upon the high seas, to the capture of prizes, and to cases in which a foreigner residing in some foreign country shall be a party, and an American state or citizen shall be the other party; provided no suit shall be brought upon a state note.

"10. Every state may emit bills of credit without making them a tender, and may coin money, of silver, gold or copper, according to the continental standard.

"11. No powers shall be exercised by Congress or the president but such as are expressly given by this constitution and not excepted against by this declaration. And any office [officer?] of the United States offending against an individual state shall be held accountable to such state as any other citizen would be.

"12. No officer of Congress shall be free from arrest for debt by authority of the state in which the debt shall be due.

"13. Nothing in this constitution shall deprive a citizen of any state of the benefit of the bill of rights established by the constitution of the state in

which he shall reside, and such bills of rights shall be considered as valid in any court of the United States where they shall be pleaded.

"14. In all those causes which are triable before the continental courts, the trial by jury shall be held sacred."

These at present appear to me the most important points to be guarded. I 4.6.76
have mentioned a reservation of excise to the separate states, because it is necessary, that they should have some way to discharge their own debts, and because it is placing them in an humiliating & disgraceful situation to depute them to transact the business of internal government without the means to carry in on. It is necessary also, as a check on the national government, for it has hardly been known that any government having the powers of war, peace, and revenue, has failed to engage in needless and wanton expense.[41] A reservation of this kind is therefore necessary to preserve the importance of the state governments: without this the extremes of the empire will in a very short time sink into the same degradation and contempt with respect to the middle state as Ireland, Scotland, & Wales, are in with regard to England. All the men of genius and wealth will resort to the seat of government, that will be center of revenue, and of business, which the extremes will be drained to supply.

This is not mere vision, it is justified by the whole course of things. We 4.6.77
shall therefore, if we neglect the present opportunity to secure ourselves, only encrease the number of proofs, already too many, that mankind are incapable of enjoying their liberty. I have been the more particular in stating the amendments to be made, because many gentlemen think it would be preferrable to receive the new system with corrections. I have by this means brought the corrections into one view, and shewn several of the principal points in which it is unguarded. As it is agreed, at least professedly, on all sides, that those rights should be guarded, it is among the inferiour questions in what manner it is done, provided it is absolutely and effectually done. For my own part, I am fully of opinion, that it would be best to reject this plan, and pass an explicit resolve, defining the powers of Congress to regulate the intercourse between us and foreign nations, under such restrictions as shall render their regulations equal in all parts of the empire. The impost, if well collected, would be fully equal to the interest of the foreign debt, and the current charges of the national government. It is evidently for our interest that the charges should be as small as possible. It is also for our interest that the western lands should, as fast as possible, be applied to the purpose of paying the home debt. Internal taxation and that fund have already paid two thirds of the whole debt, notwithstanding the embarrassments usual at the end of a war.

We are now rising fast above our difficulties, every thing at home has the 4.6.78
appearance of improvement, government is well established, manufactures increasing rapidly, and trade expanding. Till since the peace we never sent a ship to India, and the present year, it is said, sends above a dozen vessels

from this state only, to the countries round the Indian ocean. Vast quantities of our produce are exported to those countries. It has been so much the practice of European nations to farm out this branch of trade, that we ought to be exceedingly jealous of our right. The manufactures of the state probably exceed in value one million pounds, for the last year. Most of the useful and some ornamental fabricks are established. There is great danger of these improvements being injured unless we practice extreme caution at setting out. It will always be for the interest of the southern states to raise a revenue from the more commercial ones. It is said that the consumer pays it; But does not a commercial state consume more foreign goods than a landed one? The people are more crouded, and of consequence the land is less able to support them. We know it is to be a favourite system to raise the money where it is. But the money is to be expended at another place, and is therefore so much withdrawn annually from our stock. This is a single instance of the difference of interest; it would be very easy to produce others. Innumerable are[42] the differences of manners, and these produce differences in the laws. Uniformity in legislation is of no more importance than in religion; Yet the framers of this new constitution did not even think it necessary that the president should believe that there is a God, although they require an oath of him. It would be easy to shew the propriety of a general declaration upon that subject. But this paper is already extended too far.

4.6.79 Another reason which I had in stating the amendments to be made, was to shew how nearly those who are for admitting the system with the necessary alterations, agree with those who are for rejecting this system and amending the confederation. In point of convenience, the confederation amended would be infinitely preferable to the proposed constitution. In amending the former, we know the powers granted, and are subject to no perplexity; but in reforming the latter, the business is excessively intricate, and great part of the checks on Congress are lost. It is to be remembered too, that if you are so far charmed with eloquence, and misled by fair representations and charitable constructions, as to adopt an undefined system, there will be no saying afterwards that you were mistaken, and wish to correct it. *It will then be the constitution of our country, and entitled to defence.* If Congress should chuse to avail themselves of a popular commotion to continue in being, as the fourth section justifies, and as the British parliament has repeatedly done, the only answer will be, that it is the constitution of our country, and the people chose it. It is therefore necessary to be exceedingly critical. Whatsoever way shall be chosen to secure our rights, the same resolve ought to contain the whole system of amendment. If it is rejected, the resolve should contain the amendations of the old system; and if accepted, it should contain the corrections of the new one.

Agrippa.

1. See above, 2.1.

2. See above, 3.2.

3. See A Landholder (Oliver Ellsworth), *Connecticut Courant* 3 December 1787, Ford, *Essays* 159.

4. See XIII, 4.6.49–50. On the bearing of the examples of Greece and Rome, see *The Federalist* no. 8, 47; no. 9, 50–51; on Rome and Carthage, no. 6, 32.

5. *The Federalist* no. 9, 51. On commerce as the bond of union, see Agrippa VIII, 4.6.31 n. 18.

6. For an elaboration of this view, see Charles Pinckney's speech in the Philadelphia convention on 25 June 1787; and for a major forerunner of the *The Federalist* answer, see Madison's reply to Pinckney on the next day. Farrand I, 397–404, 421–23. It may be observed that Agrippa's examples, which follow, support the proposition that a republican government will be energetic enough to suppress sedition, not that it will be exempt from it.

7. See Thomas Hutchinson, *History of the Colony and Province of Massachusetts Bay* (Cambridge, Mass., 1936) I, 123 ff.

8. The reference is to the disturbances culminating in Shays' rebellion. On the issue of American conditions in the 1780s, see Federal Farmer I, 2.8.1 n. 4; Centinel IV, 2.7.91 n. 43; Plebeian 6.11.5 n. 6.

9. For a reply to this and the following remarks, see Cassius (James Sullivan), in the *Massachusetts Gazette* 30 November 1787, Ford, *Essays* 22–23.

10. For other Anti-Federalist arguments to this effect, see Cato III, 2.6.12–16 n. 8. For Federalist defenses of the extended republic, see, in addition to *The Federalist* (nos. 9, 10, 14, 51), Ford *Pamphlets* 203–6 (Fabius), 129–30 (Citizen of Philadelphia), 248 (Aristides); Ford, *Essays* 215–16 (A Countryman); McMaster and Stone 193 (Plain Truth); ibid. 336, 386, 395 (Wilson); Elliot II, 352–53 (Hamilton); Elliot III, 85, 125, 199 (Randolph); ibid. 107–8 (Corbin), 232 (Marshall); Elliot IV, 22 (Davis); ibid. 262, 326–327 (Pinckney); *Poughkeepsie Country Journal* 12 December 1787 (Cato).

11. On heterogeneity, and particularly differences between North and South, see IX, 4.6.34–35; XII, 4.6.48; Cato III, 2.6.18 n. 13.

12. See Resolution of Stamp Act Congress, 19 October 1765; Massachusetts Circular Letter, 11 February 1768; Declaration and Resolves of First Continental Congress, 14 October 1774. Nos. 38, 45, and 56 in Henry Steele Commager, *Documents of American History* (New York 1968).

13. This alleged authority, upon which a considerable part of Agrippa's proof of the consolidating tendency of the Constitution depends, is not of course given explicitly in the Constitution. Apparently Agrippa is referring to the comprehensive federal jurisdiction that he says "clearly follows" from Article VI; but his contention is extremely dubious. See XIII, 4.6.52, for a slightly different version of this argument. Cf. Centinel II, 2.7.42;

14. On bills of rights as the standard by which rulers can be held to the terms of the contract and the people justified in their resistance, see XIII, 4.6.51, 71. For similar Anti-Federal arguments, see Old Whig IV, 3.3.21–30; Philadelphiensis IV, 3.9.21–22; DeWitt, 4.3.8; [Maryland] Farmer I, 5.1.15–16; Impartial Examiner 5.14.5, 10.

15. On the power to regulate commerce, see XIII, 4.6.53.

16. The original reads, "shewn, that instead of . . . course of things, that every endeavour . . ."

17. Cf. Monroe 5.21.12. See Agrippa XII, 4.6.58 n. 31.

18. On commerce as the producer of friendship and peace, see *The Federalist* no. 6; and cf. no. 11, 72: "An unity of commercial, as well as political interests, can only result from an unity of government." See Candidus 4.9.13–15.

19. John Adams, in Philadelphia for the meetings of the first Continental Congress in 1774, observed: "Phyladelphia with all its Trade, and Wealth, and Regularity is not Boston. The Morals of our People are much better, their Manners are more polite, and agreeable—they are purer English. Our Language is better, our Persons are handsomer, our Spirit is greater, our Laws are wiser, our Religion is superiour, our Education is better. We exceed them in every Thing, but in a Markett, and in charita-

ble public foundations." *Diary and Autobiography of John Adams*, ed. L. H. Butterfield (Cambridge 1961), 9 October 1774, II, 150. See Agrippa XII, 4.6.48.

20. Var. on Luke 19:42.

21. See McMaster and Stone 364–65.

22. This first part of letter XII, which is the beginning of the second set of Agrippa essays, although printed by Ford (*Essays* 91–92), is omitted from the E. H. Scott edition (*The Federalist and other Constitutional Papers* [Chicago 1894] II).

23. See IV, 4.6.17; IX, 4.6.34–36.

24. See IV, 4.6.17 n. 12.

25. Ford numbers this piece "XIII" and the following one "XIV"; but it is clear from the introductory and concluding notations and from the substance that these are parts of one long essay, although printed in succeeding issues of the *Massachusetts Gazette*. It appears that Agrippa intended to write one long essay (here numbered XII) containing the argument of his former series, and then added several essays containing new materials (here numbered XIII–XVI).

26. On ancient republics, see I, 4.6.6; XII, 4.6.49.

27. See VI, 4.6.23, and XV, 4.6.69 n. 36, for Wilson's argument.

28. See V, 4.6.18–21.

29. On the power to regulate trade and to tax, see VI, VII, 4.6.24–28.

30. Cf. Hanno, in a short essay not reprinted here, who makes the same argument, *Massachusetts Gazette* 13 November 1787. For W. W. Crosskey's discussion of the Massachusetts Anti-Federalists' views of the commerce power, see his *Politics and the Constitution* I, 188–90.

31. See VII, 4.6.26. On the primacy of the interest of the port, see [Maryland] Farmer VII, 5.1.108; Mercer 5.5.5; cf. Monroe 5.20.12.

32. Although Ford (*Essays* 105) identifies this argument as having been made by Caleb Strong on 16 January 1788, the report of Strong's speech of this day contains no explicit reference to Rhode Island. There is a reference to such an argument in an exchange between Bishop, King, and Gorham; and J. C. Jones argues explicitly that the clause is necessary because "a state may *refuse* to send to Congress its representatives as Rhode Island has done." Elliot II, 23–24, 28–29. For other references to Rhode Island's delinquency, see Elliot II, 48–49, 53.

33. This piece is the conclusion of the essay numbered here XIV. It was apparently overlooked by Ford and is omitted by him.

34. See Federal Farmer IV, 2.8.50 n. 39; Brutus II, 2.9.30 n. 22.

35. The date of this essay is incorrectly given by Ford as 20 January 1788. It appeared on 29 January, in the same issue as the conclusion of XIV.

36. James Wilson, "Address to the Citizens of Philadelphia," 6 October 1787, McMaster and Stone 143. See Federal Farmer IV, 2.8.50 n. 38, n. 39; [New Hampshire] Farmer 4.17.1 n.1.

37. Although Ford (*Essays* 116) finds no record of this in the *Debates of the Massachusetts Convention*, both Judge Dan and Rufus King refer to proposals before the Rhode Island legislature to select representatives by corporations rather than numbers. Elliot II, 49–50.

38. The writer had objected to Agrippa's comment that "it was said" that the Rhode Island Assembly intended to abuse its power over election and that therefore "we should put Congress in a situation to abuse theirs." See above XIV, 4.6.61.

39. On separation of powers, see Brutus XVI, 2.9.197 n. 112.

40. This argument is made in the preface of vol. I of John Adams, *Defence (Works* IV, 284–85). On bills of rights to check majority tyranny see [Maryland] Farmer I, 5.1.15 n. 11.

41. See Symmes 4.5.14 n. 5.

42. The original reads, "as."

Essay by A Federalist

BOSTON GAZETTE
26 November 1787

In rich prose A Federalist inveighs against the Massachusetts advocates of aristocracy and "rigid government"; these—and especially the lawyers among them—are the forces behind the proposed Constitution. He would rather be a free citizen of the small state of Massachusetts than an oppressed subject of a great American empire. A passing allusion to an important Anti-Federalist theme, the need for government to be (in A Federalist's words) "suitable to the GENIUS and HABITS of the citizens of these states," was the object of a penetrating Federalist criticism a few days later.

Mess'rs. Edes',

I am pleased to see a spirit of inquiry burst the band of constraint upon the subject of the NEW PLAN for consolidating the governments of the United States, as recommended by the late Convention. If it is suitable to the GENIUS and HABITS of the citizens of these states, it will bear the strictest scrutiny.[1] The PEOPLE are the grand inquest who have a RIGHT to judge of its merits. The hideous daemon of Aristocracy has hitherto had so much influence as to bar the channels of investigation, preclude the people from inquiry and extinguish every spark of liberal information of its qualities. At length the luminary of intelligence begins to beam its effulgent rays upon this important production; the deceptive mists cast before the eyes of the people by the delusive machinations of its INTERESTED advocates begins to dissipate, as darkness flies before the burning taper; and I dare venture to predict, that in spite of those mercenary declaimers, the plan will have a candid and complete examination—those furious zealots who are for cramming it down the throats of the people, without allowing them either time or opportunity to scan or weigh it in the balance of their understandings, bear the same marks in their features as those who have been long wishing to erect an aristocracy in THIS COMMONWEALTH—their menacing cry is for a RIGID government, it matters little to them of what kind, provided it answers THAT description—As the plan now offered comes something near their wishes, and is the most consonant to their views of any they can hope for, 4.7.1

they come boldly forward and DEMAND its adoption—they brand with infamy every man who is not as determined and zealous in its favour as themselves—they cry aloud the whole must be swallowed or none at all, thinking thereby to preclude any amendment; they are afraid of having it abated of its present RIGID aspect—they have strived to overawe or seduce printers to stifle and obstruct a free discussion, and have endeavoured to hasten it to a decision before the people can duly reflect upon its properties,—in order to deceive them, they incessantly declare that none can discover any defect in the system but bankrupts who wish no government, and officers of the present government who fear to lose a part of their power.—These zealous partizans may injure their own cause, and endanger the public tranquility by impeding a proper inquiry; the people may suspect the WHOLE to be a dangerous plan, from such COVERED and DESIGNING schemes to enforce it upon them: compulsive or treacherous measures to establish any government whatever, will always excite jealousy among a free people: better remain single and alone, than blindly adopt whatever a few individuals shall demand, be they ever so wise; I had rather be a free citizen of the small republic of Massachusetts, than an oppressed subject of the great American empire: let all act understandingly or not at all—If we can confederate upon terms that will secure to us our liberties, it is an object highly desirable, because of its additional security to the whole—if the proposed plan proves such an one, I hope it will be adopted, but if it will endanger our liberties as it stands, let it be amended; in order to which it must and ought to be open to inspection and free inquiry—the inundation of abuse that has been thrown out upon the heads of those who have had any doubts of its universal good qualities, have been so redundant, that it may not be improper to scan the characters of its most strenuous advocates: it will first be allowed that many undesigning citizens may wish its adoption from the best motives, but these are modest and silent, when compared to the greater number, who endeavour to suppress all attempts for investigation; these violent partizans are for having the people gulp down the gilded pill blind-folded, whole, and without any qualification whatever, these consist generally, of the NOBLE order of C[incinnatu]s, holders of public securities, men of great wealth and expectations of public office, B[an]k[er]s and L[aw]y[er]s: these with their train of dependents from the Aristocratick combination—the L[aw]y[e]r in particular, keep up an incessant declamation for its adoption, like greedy gudgeons they long to satiate their voracious stomacks with the golden bait—The numerous tribunals to be erected by the new plan of consolidated empire, will find employment for ten times their present numbers; these are the LOAVES AND FISHES for which they hunger; they will probably find it suited to THEIR HABITS, if not to the HABITS OF the PEOPLE—There may be reasons for having but few of them in the State Convention, lest THEIR 'OWN' INTEREST should be too strongly considered.—The time draws near for the choice of Delegates, I hope my

fellow-citizens will look well to the characters of their preference, and remember the Old Patriots of 75; they have never led them astray, nor need they fear to try them on this momentous occasion.

A Federalist.

1. To this another writer, who also took the pseudonym "A Federalist" replied: "I would ask this writer, if civil *habits* are antecedent, and prior to civil institutions? Would a wise legislator who was about to form a system of government, for a nation, in a state of nature, adapt his plan to the prevailing habits of such a people? No; his object would be, to introduce a code of laws that would *induce* those habits of civilization and order, which must result *from* good government. The truth of the case is, that as a people, we are destitute of FEDERAL FEATURES, and HABITS—the several *State Constitutions* are *local, partial,* and *selfish;* they are not calculated in their construction, to form *national views;* this great object is beyond their limits—and *dear bought* experience proves that the *unbounded* sovereignty of the individual governments, is incompatible with a *national* system.

"For want of those HABITS OF NATIONALITY, we have been brought into our present contemptible and deplorable situation. The proposed *Federal Constitution* is happily calculated to form us to a *national spirit,* and to diffuse those generous *federal* sentiments, without which, we never can be a happy and flourishing people." *Boston Gazette* 3 December 1787. See the similar criticism by "Convention" of another Massachusetts Anti-Federalist, above, 4.1.1 n. 1. For other discussions of this theme see Federal Farmer III, 2.8.24 n. 19.

Essay by One of the Common People

BOSTON GAZETTE
3 December 1787

This essay is a reply to a good short Federalist piece by One of the Middle-Interest, dealing mainly with the Bill of Rights, published in the *Massachusetts Centinel* 28 November 1787. One of the Common People contends that the state bills of rights will be no protection against congressional encroachments made possible by the broad and loose constitutional grants of power. In a short time American fundamental law will have become as undefined as the unwritten common law—made worse, indeed, by the different legislative jurisdictions—and Americans will have none but the weak security of the virtue of their legislators. The liberty of the press can easily be abridged by prosecuting for libel against the United States, and the trial by jury in civil cases could and should have been given constitutional protection.

Messieurs Edes,

4.8.1 A Writer in the Centinel who calls himself "*One of the middle-interest,*" has gone into a long inquiry to find out "*where we learned the idea of a Bill of Rights.*"[1] It is of little moment where it was learned, since we are possessed of so important and so invaluable a discovery, to guard the *people* against the increasing powers of artificial aristocracy, whose seeds are every where disseminated in free states. This writer thinks it would be superfluous to preface or combine with the federal constitution, a *bill of rights,* because the state constitution is already guarded by one.[2]—If the new plan is adopted, every one knows the state constitution will be very materially and essentially altered; and so far will the security of our rights be precarious and dependent on meer acts of congress, which, without this barrier, may, and by the present tenor of the new constitution, will render our priviledges as undefined as this writer says are those of the subjects of England; which are only to be "*collected from meer opinions of the learned and contradictory authors*". If we alienate a great part of the powers, at present

contained in our state constitution, and vest them in congress, why is it not as necessary that those alienated powers should be secured and limited by a declaration of rights, as that the remaining powers which are left in the hands of the state government should be thus guarded, especially if the greater half are alienated? This writer says, a bill of rights is not necessary, because the first section declares "*that all legislative powers herein* GIVEN (viz. given in the new constitution) *shall be vested in congress*;" and then says, "*the legislative powers* NOT GIVEN *are not surely in congress.*"—But will he say that the powers *therein given* are *clearly* and *explicitly* defined? that the *boundary line* of the legislative jurisdiction *given* to congress is so plain as not to be mistaken or abused? that it will never *clash* with the jurisdiction claimed by the legislature of this state? Is the following clause of such a nature as to have any fixed or definite limits? "*This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the* SUPREME LAW OF THE LAND; *and the judges in every state shall be bound thereby, any thing in the* CONSTITUTION *or laws of any state to the contrary notwithstanding.*"—Unless some additional guard is added to define the above clause, here will be a fine field for ambitious or designing men to extend the federal jurisdiction.—In the course of a few years our state legislature will be annihilated, together with our bill of rights, which this writer says is a sufficient security: our *rights* will then depend on the *virtue* of the federal legislature; our *privileges* will then be sought after in a mass of mutilated laws, in *volumes of contradictory reports of the learned.* When this federal government is established, we shall have *two* bodies to legislate for us, and unless the powers which *each* body will have a right to exercise, be clearly defined, we must expect nothing but rival discord and contention, until the federal authority gains the ascendancy, as above predicted; or what may be worse, a revolt from their domination.[3] This writer asks—"*Where is the liberty of the press taken away?*"[4] If congress have a right to controul it, they may be said to have a right to take it away.—Will not the United States Attorney have the power to prosecute any printer for a pretended libel against the United States? Will not a printer be triable for a pretended libel against any foreign minister or consul, or for a libel against any of the individual states, by a federal tribunal? Are not such prosecutions warranted by the following clause in the new constitution? "*all controversies wherein the United States shall be a party, all cases affecting foreign ministers and consuls, and all controversies between a citizen and a state,*" shall be cognizable before a federal tribunal.—Cannot congress by virtue of this clause, restrain all publick information of mal-administration? And will not congress have *absolute* uncontrouled power over printers, and every other person within the United States territory, where there will undoubtedly be a great city?

4.8.2 Never was the trial by jury in civil cases thought so lightly of in America as at this day: we have bled for it, and are now almost ready to trifle it away—because in cases of default (which implies a consent of parties) there is no trial by jury, we must give up that inestimable privilege in all civil cases whatever.[5]—This is fine reasoning sure; because we will not have a jury when we do not want them, we shall not when we do—This gentleman cannot be serious when he asserts, that "*if it were to be expressed* WHAT *civil causes should be tried by jury, it might take a volume of laws, instead of an article of rights*;" If it did I would have the volume, rather than hazard the priviledge.—But I will ask whether it requires this volume of laws to express that privilege in our state constitution? and whether there would be any difficulty in having it declared, that the citizens of each state shall enjoy it conformably to the usage in the state where the tribunal shall be established? he says, "*doubtless congress will make some general regulations in this matter,*" but it will be well to recollect that they may *unmake* them, or *not* make them too, if they please, and *when* they please; but if it is a part of the constitution, the *people alone* will have the power to change or annul it.[6]—It is too great a privilege to be left at loose. I sincerely believe if the federal constitution which shall be *given*, be *clearly defined*, and a *boundary line* be marked out, declaratory of the extent of their jurisdiction, of the rights which the state hold unalienable, and the privilege which the citizens thereof can never part with, the republick of America will last for ages, and be free.

One of the Common People

1. One of the Middle-Interest, writing in the *Massachusetts Centinel* for 28 November 1787, argued that the idea of a Bill of Rights arose in and was appropriate to a country where there was no written constitution. "Because their constitution being only to be collected out of the dust of ages, and from the meer opinions of the learned, it was just they should procure their kings to sign and seal, if I may so express it, a plain and express confirmation of those parts of their constitution which former monarchs had denied or violated." For references to Federalist claims that no bill of rights is necessary, see Mason 1.2.21 n. 1.

2. The argument of One of the Middle-Interest is more complex and defensible than appears from this characterization, and it was in fact one of the better Federalist statements on this (for the proponents of the Constitution) very difficult matter. See Brutus II, 2.9.32 n. 23. The author's conclusion is that "we *retain* all those rights which are prefixed to our state constitution, and which are not expressly given up to the national government; in addition to which we have those other rights which are *not* in the state constitution, but which are expressed in the *federal*."

3. See Monroe 5.21.17 n. 8.

4. He goes on: "For if the several state constitutions already protect the liberty of the press, and no legislative power is given to Congress to restrict that liberty; but if on the other hand the republican forms of government are guaranteed to the several states, then surely the liberty of the press is most amply provided for. The first section in the federal constitution already quoted, plainly shews, that Congress have no legislative powers but what are given them by that constitution—they therefore can never restrict the liberty of the press, unless they have some power given them by the constitution so to do, which no where appears." This is the argument made by James

Wilson in his Statehouse Speech (McMaster and Stone 143); cf. the citations in Federal Farmer II, 2.8.50 n. 39.

5. One of the Middle Interest makes the standard Federalist argument that the practice of the states is extremely various, agreeing only in *not* requiring a jury trial for *all* civil causes. Cf. Federal Farmer II, 2.8.19 n. 16. For other Anti-Federal discussions, see Plebeian 6.11.15 n. 13.

6. "The answer is, that all legislatures must be trusted with something—to suppose they will so form the judicial departments merely to oppress, without a possibility of serving avarice, ambition or any known human motive, is to suppose that men will be so disinterested as to act against their own existence, and from no given cause that can be described." *Massachusetts Centinel* 28 November 1787. See Smith 6.12.34 n. 32.

Essays by Candidus

(BOSTON) INDEPENDENT CHRONICLE
December 1787–January 1788

The essays of Candidus are ascribed to Samuel Adams or his follower, Benjamin Austin, Jr.[1]

Beginning with a somewhat labored defense of full deliberation and denial of any necessity to accept the Constitution in its entirety, Candidus goes on to list the usual objections (4.9.11). The chief contribution of the essay lies in the author's discussion of the state of American commerce. What is wanted is a union "of commerce and amity" rather than "of legislation and taxation" (4.9.13–16). The whole power of legislation and taxation given to the legislature and the extensive jurisdiction given to the judiciary in the new Constitution are dangerous and unnecessary. The writer ends on a perennial Anti-Federalist and "old republican" theme, warning against the tendency to blame on a lack of energy in government what is really due to dissipation and living beyond the means available; the remedy is to be found, not in governmental reform, but in industry and frugality.

In the second essay Candidus attempts to meet the criticism that the Anti-Federalists propose no alternative to the Constitution by sketching the outlines of a new plan, taken from previous resolutions of Congress, the Articles of Confederation, and the proposed Constitution. The plan provides for congressional power to pass a navigation act, regulate all commerce, and raise revenue by impost. The states would enter into a treaty of amity with one another to pay the existing debt, to maintain peace, to conduct foreign affairs, to establish a supreme court for specified federal purposes (see summary, 4.9.23). Candidus ends with a further discussion of commerce, the importance of a better federal system, and the danger of going too far and surrendering everything to a new government. It would be safer and more effective to confine Congress to the objects of defense and promoting commerce. In the very brief third letter, Candidus defends himself against being "branded as an anti federalist."

1. See Harding, *Contest over Ratification* 22–23. Harding is mistaken in saying that there were "several articles" by Candidus published in the *Chronicle* in December; there were two articles in December and one in January. See Charles Warren, Massachusetts Historical Society, *Proceedings* 64: 147 n. 6, 151, 153.

I
6 December 1787

Mess'rs. Adams & Nourse,

The Constitution recommended by the Convention, is a subject of the greatest importance, to every individual of these States; and ought to be seriously considered. The respectability of the characters who composed that Assembly, without doubt, will have its due weight; yet it cannot be supposed, that the citizens of America, will so far rely on the abilities of those gentlemen, as to concur in their measures, while any doubts remain on their minds, respecting their salutary operations. 4.9.1

Some leading arguments offered in favour of the Constitution, are, that our situation, is such, as renders it absolutely necessary, we should establish some Federal Plan of Government;—that the present Constitution, is the *only one* that can ever be adopted; and that if we *reject this*, the consequences will be fatal to this country. These dreadful apprehensions seem to preclude every candid enquiry on the subject: For if we *must comply*, without even a lisp of hesitation, it is needless to offer it to the people, for their consideration. If the authors are *deified*, and their works pronounced *infallible*, it is delivered to the people, rather for their *implicit acquiescence*, than for their *free deliberations*. 4.9.2

It is also said, that the States have no other alternative, than to *accept* it in every particular, or totally to *reject* it. These observations, however, I conceive, are mere assertions, without evidence. The people being called on to convene, and deliberate, proves that the Convention themselves, supposed the plan was subject to amendments. Neither can we imagine, those respectable characters, would insinuate an idea so affronting, and degrading, to the Freemen of these States, as that they *must submit* in the gross, to the Constitution offered, notwithstanding they might have the most weighty reasons to reject some *particular parts*. 4.9.3

It is further said, *that anarchy and civil war, will ensue, provided we reject the proposed Constitution:* This is a bugbear, raised to influence a very respectable part of the community. Can it be supposed that the people, are so savage, and void of every principle of common prudence, that they would abandon all their deliberations in Council, and rush immediately to arms? The people of these States, are too wise and considerate, to be guilty of such horrid imprudencies: They are too enlightened to decide their political controversies by the SWORD. Those persons therefore, who raise such vile suggestions, are endeavouring to effect certain purposes, by working on the tender passions of the honest and well-disposed.[1] 4.9.4

Some persons are for adopting the Constitution, without any farther consideration, as they say it is *impossible* for us to be in a worse situation than at present.[2] Such men are fit subjects to answer any purposes whatever, and 4.9.5

are acting a part which they cannot justify to themselves or posterity. Are not such sentiments degrading to the character of Freemen? It must be a melancholly crisis when the people are tired of guarding their liberties; and are resigned to whatever government is *dealt to them.* If our commerce is failing, and our industrious citizens are distressed, so far from being dilatory, the more caution is required, to adopt such a plan as will remedy their complaints. Let such persons read the history of other nations, and then judge whether it is *impossible* that our situation should be worse.

4.9.6 Is it presumed, that the wisdom of this people has so far forsaken them, that they are willing to accede without any examination, to a mode of government, which may affect millions of their posterity? Or is it conceived that the period has arrived when they are ready to resign every pretension to judge for themselves, and dare not scrutinize any establishments on which depend their political happiness and welfare?

4.9.7 On the other hand, if the State Conventions do not approve of every paragraph, *must the whole plan* become null and void? Shall the people, after being at the trouble of choosing members to meet in Convention; and taxing themselves with the expence of their assembling, be *obliged* to relinquish the whole business, and throw up every prospect of succeeding in their attempts, to establish a permanent government? These suggestions I conceive are artfully introduced to mislead the people, and are calculated to operate on their *fears,* so far as to influence them to accede *in every particular* to the proposed plan, although they might wish to make some very essential alterations.

4.9.8 Is it not the greatest absurdity to suppose, that the plan offered, *cannot* be amended previous to its adoption,—when it expressly provides for proposing amendments after it has begun to operate? Would it not be the height of folly, to adopt a plan *entire,* in expectation of altering some very essential parts at a future period? Surely the most prudent method is, to rectify all important matters, while we are assembled to deliberate on the subject, rather than to hazard the chance of feeling evils, when possibly it may be too late to remedy them? These are considerations, worthy our serious attention.

4.9.9 Some zealots are in extacy, when they speak of the present Constitution, and think it as sacred as the Commandments delivered from *Sinai.* But if we recur to what gave rise to the Convention, we shall not find that any thing super-natural was expected. The plain truth of the case is, these States finding the necessity of adopting a Federal plan to regulate their commerce, promote their agriculture and manufactures, chose from each State a number of respectable characters to meet for the above purposes.—They accordingly met, and after four months deliberation, they matured the plan now offered for our consideration. No man I presume did suppose at the time of their choice, that the devised plan, whatever it might be, was to be

rejected or *approved* in every particular. The principal design at first was, to bring forward some preliminary articles, by which the people might know the general disposition of the States; and from thence they would be able to judge, how far it was probable a Federal system could be adopted. The Constitution now offered is the outlines of a plan, which probably might be agreed on with certain amendments by the whole confederacy. This knowledge of the inclination of the several States, is as much as we could rationally have expected at the first meeting of the Convention.

4.9.10 Those persons who are in such *great haste* to adopt the present plan, should consider that even the smallest treaties and most common business of legislation require many overtures before they are accomplished. Certainly then so great an undertaking as the Federal Constitution of thirteen Independent Sovereign States, so various in their interests, cannot be compleated without the greatest caution and deliberation. We should not be so greatly impatient if we considered this important truth, *that on the wise establishment of a Federal plan, the liberties we have so dearly purchased, wholly depend.*

4.9.11 The grand question therefore now is, what objections have we to the system offered? The State Conventions when they assemble, without doubt will keep the *original plan*, as entire as possible. It is not supposed, that they will object to any matters, but such as they conceive are destructive to the liberties of the people. Provided objections are made, "*that a bill of rights is wanted: That the liberty of the press is not fully secured: That the powers of Congress to raise armies, lay impost, excise and direct taxation, are too great and dangerous: That the representation is inadequate: That the executive is vested with too extensive authority, and may tend to despotism: That the Legislatures of the several States would in time be annihilated: That the Congressional body would become independent of their constituents, by being paid out of the public treasury: That the choice of President by a detached body of electors was dangerous and tending to bribery; or if it is conceived that the States ought to confederate for the purposes of commerce and amity, rather than for those of legislation and taxation.*" If after a mature and candid examination the State Conventions should consider the foregoing objections of the highest importance, without doubt they would propose, that such particulars should be *erased*, and *amendments* inserted.

4.9.12 The State Conventions in case any alterations are required, have it in their power to choose delegates to meet again in Continental Convention. The objections (if any) of the several States would then be fully known, and after examining the sentiments of the whole, some plan it is probable would be devised, that would meet the approbation of the confederacy. As the people are now convinced (even more than when the late Convention was chosen) of the necessity of adopting some permanent foederal Constitution.

4.9.13 Many people are sanguine for the Constitution, because they apprehend our *commerce* will be benefited. I would advise those persons to distinguish between the evils that arise from extraneous causes and our private imprudencies, and those that arise from our government. It does not appear that the embarrassments of our trade will be removed by the adoption of this Constitution. The powers of Europe do not lay any extraordinary duties on our *oil, fish* or *tobacco,* because of our government; neither do they discourage our ship building on this account. I would ask what motive would induce Britain to repeal the duties on our *oil,* or France on our *fish,* if we should adopt the proposed Constitution? Those nations laid these duties to promote their own fishery, &c. and let us adopt what mode of government we please, they will pursue their own politicks respecting our imports and exports, unless we can check them by some *commercial* regulations.

4.9.14 But it may be said, that such commercial regulations will take place after we have adopted the Constitution, and that the northern States would then become carriers for the Southern. The great question then is, whether it is necessary in order to obtain these purposes, for every State to give up their whole power of *legislation* and *taxation,* and become an unwieldly republick, when it is probable the important object of our commerce could be effected by a *uniform navigation act,* and *giving Congress full power to regulate the whole commerce of the States?* This power, Congress have often said was sufficient to answer all their purposes. The circular letter from the Boston merchants and others, was urgent on this subject. Also the navigation act of this State, was adopted upon similar principles, and was declared[3] by our Minister in England, to be the most effectual plan to promote our navigation, *provided it had been adopted by the whole confederacy.*[4]

4.9.15 But it may be said, this regulation of commerce, without *energy* to enforce a compliance is quite ideal: *coertion* with some persons seems the principal object, but I believe we have more to expect from the *affections of the people,* than from an armed body of men. Provided an uniform commercial system was adopted, and each State felt its agreeable operations, we should have but little occasion to exercise force.[5] But however, as power is thought necessary to raise an *army,* if required, to carry into effect any foederal measure, I am willing to place it, where it is likely to be used with the utmost caution. This power I am willing to place among the confederated States, to be exercised when *two thirds* of them in their *Legislative capacities* shall say the common good requires it. But to trust this power in the hands of a few men delegated for two, four and six years, is complimenting the ambition of human nature too highly, to risque the tranquility of these States on their absolute determination. Certain characters *now on the stage,* we have reason to venerate, but though this country is now blessed with a Washington, Frnaklin, Hancock and Adams, yet pos-

terity may have reason to rue the day when their political welfare depends on the decision of men who may fill the places of these worthies.

4.9.16 In considering the proposed Constitution, it is very necessary to distinguish what may give an undue influence to a particular profession and what ought to be adopted for *national purposes*. This party-influence is very evident in the powers vested in the Supreme Judicial. These powers extending "between citizens of different States," also "between citizens of a State, and citizens of foreign States," will I apprehend occasion innumerable judicial controversies; and the people will become exposed to the most expensive law suits; as almost every cause (even those originally between citizens of the same State) may be so contrived as to be carried to this foederal court. A poor man may be harrassed by tedious and expensive appeals to this Supreme Court, or "such *inferiour Courts as Congress may from time to time ordain and establish*."

4.9.17 The question then on this subject is, whether the judicial power ought to extend to any other than *national matters*. such as "treaties," &c. And whether the Judicial Courts of the several States are not competent, to decide as usual on the controversies of the individuals of the several States?

It is said, that the parties by this establishment, may appeal to a disinterested foederal Court, which will secure to them a fair trial, and an impartial judgment. But this mode of reasoning is calculated to mislead, by a false insinuation, rather than to prevent any evils which at present exist. The equity of our State Judicial Courts, has never been a subject of complaint. Why then should we give up these State trials, and suffer ourselves to be harrassed by a long and expensive appeal to a Continental Supreme Judicial Court? Would not such appeals serve to give every advantage to the rich over the poor? The tradesman, mechanic, and farmer, would by this establishment, be exposed to every imposition from the wealthy; as the former could not spare the time, and defray the expence of prosecuting their legal claims, distant from home. This mode also gives every advantage to British and other foreign creditors to embarrass the American merchant by appeals to this Court.

4.9.18 Upon the whole, we are too apt to charge those misfortunes to the want of *energy* in our government, which we have brought upon ourselves by dissipation and extravagance; and we are led to flatter ourselves, that the proposed Constitution will restore to us peace and happiness, notwithstanding we should neglect to acquire these blessings by industry and frugality.[6]—I will venture to affirm, that the extravagance of our British importations,—the discouragement of our own manufactures, and the luxurious living of all ranks and degrees, have been the principal cause of all the evils we now experience; and a general reform in these particulars, would have a greater tendency to promote the welfare of these States, than any measures that could be adopted.—No government under heaven could

have preserved a people from ruin, or kept their commerce from declining, when they were exhausting their valuable resources in paying for superfluities, and running themselves in debt to *foreigners*, and to *each other* for articles of folly and dissipation:—While this is the case, we may contend about forms of government, but no establishment will enrich a people, who wantonly spend beyond their income.

4.9.19 The foregoing observations are intended solely to guard us against the artful suggestions of partizans on either side, and to remove every undue biass, while we are deliberating on this important subject.—I cannot but console myself, that some measures will be adopted by the several States, to promote the great purposes of agriculture, trade and manufactures; and provided the plan now offered should not be wholly accepted, it is presumed the wisdom of the States will not suffer the materials to be thrown away; but will carefully select the choicest, and on the basis of PUBLIC CONFIDENCE establish some foederal system, that will not be dissolved till the consummation of all things.

Candidus.

II

20 December 1787

"Remember, O my Friends, the Laws, the Rights,
The generous plan of Power, deliver'd down
From age, to age, by your renowned forefathers,
So dearly bought, the price of so much Blood!
O! Let them never perish in your hands,
But piously transmit them to your Children."

Addison[7]

4.9.20 In my last, I endeavoured to guard my countrymen, against the artful suggestions of many who say that the proposed Constitution is the *only one* that can be adopted: that we *must* receive it without any *amendments;* and that *anarchy and civil war,* will be the consequences of rejecting it.—The two former pleas, I contended was derogatory to freemen, and the latter affronting to our understanding.

I need not urge my countrymen, to a serious consideration of the important business before them; presuming that the wisdom and prudence which have ever been the characteristic of Americans, will lead the members of the convention to consider maturely, before they decide on so momentous a question.

4.9.21 Many arguments have been offered to the public, both for, and against the

new Constitution; on one side we have the rapturous strains of a *Wilson*, on the other the nervous reasoning of *Brutus:*[8]—But the advocates for the Constitution, have always assumed an advantage by saying, that their opposers have never offered any plan as a substitute; the following outlines are therefore submitted, not as *originating* from an individual, but as *copied* from former resolutions of Congress, and united with *some parts* of the Constitution proposed by the respectable Convention. This being the case, I presume it will not be invalidated by the cant term of antifederalism, viz.

1st. That the Legislature of *each State*, empower Congress to frame a *navigation act*, to operate uniformly throughout the States; reserving to Congress all necessary powers to *regulate our commerce with foreign nations, and among the several States, and with the Indian tribes*. The revenue arising from the *impost* to be subject to their appropriations, "to enable them to *fulfil their public engagements with foreign creditors*."[9] 4.9.22

2d. That the Legislature of each State, instruct their delegates in Congress to frame a treaty of AMITY, for the purposes of discharging each State's proportion of the public debt, and support of the foederal government. To assist each other in cases of *insurrections* and *invasion:* and in case any State within the confederacy should be *delinquent* in discharging their proportion of the public debt, either *foreign or domestic*, to enforce (if necessary) their immediate payment. Each State *obligating themselves in the treaty of amity*, to furnish (whenever required by Congress) a proportionate number of the Militia, who are ever to be well organized and disciplined, for the purposes of repelling any invasion; suppressing any insurrection; or reducing any delinquent State within the confederacy, to a compliance with the foederal treaty of commerce and amity.—Such assistance to be furnished by the *Supreme Executive* of each State, on the application of Congress.—The troops in cases of *invasion* to be under the command of the Supreme Executive of the State immediately in danger; but in cases of *insurrection*, and *when employ'd against any delinquent State in the confederacy*, the troops to be under the command of Congress.

3d. That such States as did not join the confederacy of *commerce and amity*, should be considered as *aliens;* and any goods brought from such State into any of the confederated States, together with their vessels, should be subject to heavy extra duties.

4th. The treaty of amity, agreed to by the several States, should expressly declare, that no State (without the consent of Congress) should enter into any treaty, alliances or confederacy, grant letters of marque and reprisal; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder; expost facto law, impairing the obligations of contracts; engage in war, or declare peace.[10]

5th. A Supreme Judicial Court to be constituted for the following *foederal purposes*, viz. To extend to all treaties made previous to, or which shall be made under the authority of the confederacy. All cases affecting Ambas-

sadors, and other public Ministers and Consuls; controversies between two or more States; and between citizens of the same State, claiming lands under grants of different States.—To define and punish piracies, and felonies committed on the high seas, and offences against the law of nations.

6th. That it be recommended to Congress, that the said *navigation act*, and *treaty of amity*, be sent to the Legislatures (or people) of the several States, for their assenting to, and ratifying the same.—The ratification of nine States, to be sufficient for the establishment of such a navigation act, and treaty of amity, between the States, so ratifying the same.[11]

7th. A regular statement and account of the receipt and expenditures, of all public monies, should be published from time to time.[12]

4.9.23 The above plan it is humbly conceived secures the *internal government* of the several States, promotes the *commerce* of the whole union; preserves a due degree of *energy;* lays restraints on *aliens;* secures the several States against *invasions* and *insurrections,* by a MILITIA, rather than a STANDING ARMY; checks all *expost facto* laws; cements the States by certain *foederal restrictions;* confines the judiciary powers to *national matters;* provides for the public information of *receipts* and *expenditures:* in a word, places us in a compleat *foederal state.*

4.9.24 Every man must be sensible, that a foederal system, is of the utmost importance to our national prosperity.—The deranged situation of our public affairs, now calls on us to adopt such measures as will relieve the distresses of the PEOPLE, and establish upon a permanent basis the COMMERCE of these States.

4.9.25 The encouragement of a beneficial commerce must be acknowledged, to be of the greatest public utility; as the value of our produce and our lands, must either rise or fall in proportion to the prosperous, or adverse state of trade. This essential concern, has ever claimed the particular attention of Congress; their earnest solicitations to vest them with sufficient powers for this purpose, fully evince of what importance they considered this object. Provided their requisitions had been complied with, our trade would probably have been upon a respectable footing,—and foreigners would largely have contributed to the payment of our national debt.

4.9.26 The question now is, what public measures must be adopted to restore our decayed commerce, and give energy to government? These I presume, are the great objects to be considered: And, provided this business is earnestly undertaken, every embarrassment we now experience would subside; our public credit would revive; our government would receive every support; a circulation of currency would ensue; our taxes would be quickly collected; the husbandman, merchant and tradesman, would experience the salutary effects; and *public confidence*, which has long been wanting among us, would be again restored.

4.9.27 Notwithstanding the many advocates for the adoption of the new Constitution, I cannot but doubt, whether this establishment will remedy our

complaints. It is true the government of these States has been for many years in a decline; *for want of a federal system,* all our measures to promote the public interest have proved abortive. But in order to remedy these evils, shall we now pass to the other extreme; and, from denying Congress every power whatever, wantonly surrender into their hands our *Excises,* and submit to their *direct taxation?* with powers to raise armies, &c. &c.

4.9.28 The readiness of the people to adopt the new Constitution, arises in a great degree from the apprehension that *no other mode* can be adopted: But this is a mistaken idea, as Congress a few years since, pointed out a mode similar to a part of the plan now offered,—which they recommended to the several States for their adoption.

4.9.29 The resolves of Congress, 18th April, 1783, "recommends to the several States, to invest them with powers to levy for the use of the United States, certain duties upon goods, imported from any foreign port, island or plantation;" which measure is declared by them, "To be a system more free, from well founded exceptions, and is better calculated to receive the approbation of the several States, *than any other, that the wisdom of Congress could devise; and if adopted, would enable them to fulfil their public engagements with their foreign creditors.*"[13]

4.9.30 The address of the General Court of this Commonwealth, to the people, 30th October, 1786, fully evinces, that measure much short of the proposed Constitution, would restore these States to the highest degree of harmony and respectability.

They say "Of the *national debt,* that part which is due to foreigners, must be paid in gold and silver;—if the *Continental Impost,* should take place, which there is much reason to expect, *it would immediately discharge us from the principal of this debt;* with respect to the *Continental domestic debt,* Congress have resolved that the lands ceded to them, by the individual States, shall be disposed of, *for the payment of that debt; the particular debt of this Commonwealth,* is almost wholly due to its citizens; considerable sums are expected from the sale of lands in the easterly part of this State."[14]

4.9.31 From the above quotations, it does appear, that the *Continental Impost,* is fully adequate to enable Congress to fulfil their engagements with their *foreign Creditors.* The *lands ceded to Congress,* are to be disposed of, for the payment of the *Continental domestic debt*:* And the *particular debt of this State,* will probably, (exclusive of the Western territory) be discharged in a great measure, from the sale of the *Eastern lands.* If then, these three great national objects, can be accomplished, without a total surrender of the Sovereignty of these States, why should each State with such *alacrity,* reduce themselves to mere corporations,—and submit their *Excises,* with

*The Continental domestic debt, is £27,000,000; Congress have already sold lands to the amount of £6,000,000, and about £11,000,000 are already collected in the different State Treasuries; so that there remains to be redeemed, not more than £10,000,000.

every other tax, to the unlimited controul of Congress? This conduct in the American annals, may appear as inglorious, as King *John's* resignation of the Crown, to the *Pope's Legate*. The magnitude of the surrender is expressed most forcibly by Mr. *Wilson*, when he says, "Thirteen Sovereign States, some of which, in territorial jurisdiction, *population*, and *resource*, equal the most respectable nations of Europe; but likewise myriads of citizens, who in future ages, shall inhabit the vast uncultivated regions of the Continent." Certainly then, the importance of the business before us, ought to "fill our minds with awe and apprehension."[15]

4.9.32 The creditors of the particular States, would become great sufferrers, if the *Excises* are wholly subject to the use of Congress. The interest of the State debt must remain for many years unpaid; as the necessary arrangements of Congress; the pay of their officers; the great expences naturally attending so extensive a system of government; the parade and pagentry necessary to keep up the etiquette of *Dignities;* together with the enormous expenditures, within the confines of the Federal town, will call for the greatest part of the money that can be for many years collected.

4.9.33 Provided the Constitution should be adopted in *all its parts,* the Congressional Body, would have so many important matters to consider, that the most essential object of *Commerce* might not claim that particular attention, which our present situation requires. The merchant and tradesman, might be waiting with earnest expectations for some commercial regulations, while Congress were busily engaged in framing other systems of legislation.

4.9.34 When we consider the great revenue requisite to support the proposed Constitution, we ought to reflect whether the *abilities* of the people are proportionate. How can the tradesman, farmer and merchant in the present feeble state of their several occupations, and employments, be able to support the immediate expences of the new Constitution? The demands on them, would be *hastily* made; and they must be answered, even before any beneficial operations could arise from the establishment; and after those great advances of taxes, it is quite uncertain, whether we should not be disappointed in our expectations, of the revival of our commerce.

4.9.35 But should we adopt the plan proposed by Congress, in their resolves of the 18th April, 1783, (already mentioned) no extraordinary expences would arise, and Congress having but *one object* to attend, every commercial regulation would be uniformly adopted; the duties of impost and excise, would operate equally throughout the States; our ship-building and carrying trade, would claim their immediate attention. And in consequence thereof, our agriculture, trade and manufactures would revive and flourish. No acts of legislation, independent of this great business, would disaffect one State against the other; but the whole, uniting in one Federal System of commerce, would serve to remove all local attachments, and establish our navi-

gation upon a most extensive basis. The powers of Europe, would be alarmed at our Union, and would fear lest[16] we should retaliate on them by laying restrictions on their trade.

These being the probable consequences of a commercial system, the questions are, Whether it is necesssary, to adopt the Constitution proposed; or whether each State, complying with the request of Congress, together with the other parts of the plan proposed, would not answer every purpose we would wish to effect? If the latter is competent to these purposes, why should we be so urgent to adopt a plan of government, among other defects, destitute of that basis of freedom, A BILL OF RIGHTS; and which exposes every man, within these States, to be drag'd hundreds of miles, to a Federal Judicial Court?* 4.9.36

The Constitution proposed, may aggrandize a few individuals: *The offices of honor and profit, may please the AMBITION of some, and relieve the EMBARRASSMENTS of others.* It may serve to multiply Judicial controversies, and embarrass the citizens of the several States, by appeals to a Federal Court. It may give an undue influence to Congress, by the appointment of a numerous Body of officers. It may discourage *Industry,* by promoting an infinite train of dependants and seekers.—But the great object of commerce,—our national respectability,—together with industry and frugality, would probably be the happy consequences of a Commercial Confederation. 4.9.37

These States, by the blessing of Heaven, are now in a very tranquil state.—This government in particular, has produced an instance of ENERGY, in suppressing late Rebellion, &c. which no absolute Monarchy can boast: And, notwithstanding the insinuations of a *"small party,"* who are ever branding the PEOPLE, with the most approbious Epithets; representing them as aiming to level all distinctions; emit paper money; encourage the Rebellion. Yet the present General Court, the voice of that Body, whom they have endeavoured to stigmatize, have steadily pursued measures foreign from the suggestions of such revilers. And the public credit has been constantly appreciating since the present Administration. 4.9.38

Let us then be cautious how we disturb this general harmony. Every exertion is now making, by the people, to discharge their taxes. Industry and frugality prevail. Our commerce is every day encreasing by the enterprize of our Merchants.—And above all, the PEOPLE of *the several States are convinced of the necessity of adopting some Federal Commercial Plan.* 4.9.39

*Supposing a merchant at the southward, should order his correspondent in Boston, to build him a vessel: The merchant after forwarding his accounts, in case of any dispute, might be carried to the Supreme Judicial Court: the ship-carpenter would be obliged to attend the trial, and probably call'd on, to carry a number of his workmen as witnesses; the expences attending their journey; the delay of the cause; neglect of business—together with numberless intervening charges, would absorb the earnings of a whole year's labour.

May that kind Providence, which has ever conducted America through every changing scene, guide and direct the ensuing Convention, to adopt such measures, as will promote the lasting happiness of these States.

Candidus.

III

3 January 1788

Mess'rs Printers,

4.9.40 It has long been the boast of the Americans, that they are privileged above all other nations, by having it in their power, to adopt a Constitution on the free deliberations of the people.—The attempts therefore, which have been made to destroy this freedom, must be peculiarly disgusting to every man, who sincerely wishes the happiness and welfare of his country.

As a citizen of this Commonwealth, I ventured to offer my sentiments on a subject, which is now before the people, for their consideration. The infamous publications, which have appeared in consequence of my remarks, serve only to expose the insolence of party writers, who are anxious to curb every candid enquiry, lest[17] they should be disappointed in their fancied expectations.[18]

4.9.41 No person within these States, more sincerely wishes the adoption of a federal system; being sensible of the necessity of an efficient Government, to establish our national respectability, and promote our agriculture, manufactures and commerce; but through the violence of party zeal, every man who dares exercise his own judgment, is branded as an antifederalist, tho' his sentiments should wholly correspond with the repeated requisitions of Congress.

4.9.42 This ungenerous method of condemning characters, is contrary to that candour, which actuates the citizens of these states. Freedom of debate in all national questions, has ever been held sacred among a free people; the great subject now submitted to the public, most certainly claims this indulgence, as on its impartial discussion, every thing that is valuable depends.

The adoption of the proposed Constitution, being a concern of such magnitude, we are in duty bound to hear with patience, the observations of our fellow citizens, provided their remarks are delivered with calmness and propriety; this candid disposition towards each other, cannot at this time injure us, but would be the means to unite every man, in embracing a system of Government, which might forever secure the liberties of this Country.

Candidus.

1. Cf. *The Federalist* nos. 6 and 7. See Centinel IV, 2.7.91 n. 47; XI, 2.7.139 n. 74.

2. "We may indeed with propriety be said to have reached almost the last stage of national humiliation. There is scarely anything that can wound the pride, or degrade the character of an independent nation, which we do not experience. . . . [I]t may in general be demanded, what indication is there of national disorder, poverty and insignificance that could befal a community so peculiarly blessed with natural advantages as we are, which does not form a part of the dark catalogue of our public misfortunes." *The Federalist* no. 15, 91–92. For references to discussions of American circumstances, see Centinel IV, 2.7.91 n. 43; Federal Farmer I, 2.8.1 n. 4; Plebeian 6.11.5 n. 6.

3. The original reads "and which was declared . . ."

4. See Jensen, *New Nation* 399–407.

5. This argument is of course similar to that made by Agrippa; see VIII, 4.6.31–32.

6. See DeWitt 4.3.21; Friend to the Rights of the People 4.23.3(4); Henry 5.16.10; Plebeian 6.11.6 n. 7.

7. Joseph Addison, *Cato, A Tragedy* act 3, sc. 5.

8. See Brutus 2.9.

9. See resolutions of 3 February 1781, 18 April 1783, and 30 April 1784, *Journals of the Continental Congress* XIX, 112–13; XXIV, 257 ff., XXVI, 321–22.

10. Articles of Confederation, Art. VI.

11. Ibid., Art. IX.

12. Ibid.

13. See *Journals of the Continental Congress* XXIV, 257–60, 277–83.

14. *Address From the General Court to the People of the Commonwealth of Massachusetts* (Boston 1786).

15. Candidus is quoting from the Dallas version of James Wilson's speech of 24 November to the Pennsylvania ratifying convention; see McMaster and Stone 218.

16. The original reads, "least."

17. The original reads, "least."

18. See especially the satirical Candidus in the *Massachusetts Centinel* of 26 December 1787.

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Essay by Cornelius

HAMPSHIRE CHRONICLE
11 and 18 December 1787

The essay by Cornelius was one of the few Massachusetts Anti-Federalist essays of substance originating outside Boston. Samuel Bannister Harding reprints the essay in his study of ratification in Massachusetts; and his evaluation—with perhaps the substitution of an "and" for his "but"—is perfectly just: "it is an able, fair-minded production, showing a considerable degree of political knowledge and independence of thought; but it is tinctured with a democratic jealousy and a distrust of commercial interests which was the characteristic of most of the rural districts of this State."[1] Cornelius begins by pointing out that the Constitution is an entirely new system, inconsistent with the provisions for amending the Articles of Confederation. He provides an excellent statement of the dangers of such a precedent to the stability of law and public and private engagements (4.10.4–5), a persistent Anti-Federalist theme. Proceeding systematically through the main departments of government, he argues that the legislature is given unnecessarily broad powers and is substantially independent of the control and even the knowledge of the people. In the relatively narrow context of the power of the legislators to determine their own pay, he engages in broad reflections on the character of the national representatives, particularly their tendency to yield to the luxurious example of the affluent citizens and foreign representatives, with whom they will come chiefly into contact, and in turn to set such an example themselves and thus to promote luxury and extravagance (4.10.8–9). Discussing the provision for the election of the representatives, Cornelius describes the conflict of interests between the landed and mercantile interests, the greater natural compactness and maneuverability of the latter, and the likelihood of the power of the new government falling into its hands (4.10.11). In the executive, Cornelius finds an elected monarchy which will be the source of dissension among the states (4.10.12); and in the judiciary, numerous and expensive courts to burden the citizens (4.10.13).

Cornelius grants, indeed strongly emphasizes, the need for giving Congress further powers—but insists that in a surfeit of liberty Americans should not swing to the other extreme. He suggests that it will be enough to give Congress the power to lay and collect taxes, duties, imposts, and

excises (not the impost alone, as many Anti-Federalists suggested) and to regulate commerce. If a presidency like that in the Constitution is indeed necessary, it should be made hereditary and for life to avoid the rivalship and corruption of an elective monarchy. If a federal judiciary is necessary, it should be one with fewer courts and a smaller jurisdiction (4.10.17–18).

Cornelius concludes in a somewhat miscellaneous fashion, pointing to the inequity to Massachusetts of the method of apportioning direct taxes, the tendency of the Constitution to a rule of men rather than of law, and (again) the danger of presidential elections (4.10.19–21).

1. Harding, *Contest over Ratification* 33.

11 December 1787

Great, and perhaps, just encomiums, are, in the publick prints, and in private circles, daily bestowed on the constitution reported by the late Federal Convention. Not the least objection, that I recollect, has publickly appeared against it. Among those in particular, who are reputed wise and discerning, almost every one seems eager to embrace it. This being the case, it will undoubtedly be considered by many, as discovering a want of modesty in any one, who may presume to express a doubt of the expediency and happy consequences of adopting the constitution. 4.10.1

As truth will bear the light; and by how much the more close examination it undergoes, by so much the more ravishing beauty it will shine; there can be no danger in hinting at some of the objections that arise against this form of government, in the mind of one, who feels for his own safety—who has never learned to see with eyes, other than his own, and who, at the same time, wishes the happiness of his fellow men, so far at least, as that of his own is included. 4.10.2

Power has not commonly been suffered to lie down dormant, and to rust in the hands of its possessors, for want of use. It may well be presumed that men, whether individuals, or publick bodies, will generally exercise as much power as they are legally vested with, and as much to their own private advantage as they have a constitutional right to do.[1]—With this general idea in view, let us attend to the Constitution, and soberly consider some of the consequences that will probably follow, if it should be adopted by the United States. 4.10.3

It may be observed in the first place, that this constitution is not an amendment of the confederation, in the manner therein stipulated; but it is an intire subversion of that solemn compact.—By the 13th article of that compact, the faith of the United States is solemnly plighted to each and every State, that "the articles of this confederation shall be inviolably ob- 4.10.4

served by every State, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States and be afterwards confirmed *by the legislature of every state.*"

4.10.5 By the 7th article of the constitution, it is ordained, that "the ratification of *the conventions of nine States* shall be sufficient for the establishment of this Constitution between the States so ratifying the same."

Will not the adoption of this constitution in the manner here prescribed, be justly considered as a perfidious violation of that fundamental and solemn compact, by which the United States hold an existence, and claim to be a people? If a nation may so easily discharge itself from obligations to abide by its most solemn[2] and fundamental compacts, may it not, with still greater ease, do the same in matters of less importance? And if nations may set the example, may not particular States, citizens, and subjects, follow? What then will become of publick and private faith? Where is the ground of allegiance that is due to government? Are not the bonds of civil society dissolved?[3] Or is allegiance founded only in power? Has *moral obligation* no place in civil government? In mutual compacts, can one party be bound while the other is free? Or, can one party disannul such compact, without the consent of the other? If so, constitutions and national compacts are, I conceive, of no avail; and oaths of allegiance must be preposterous things.

4.10.6 By this constitution, *the legislative powers are vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.* The latter are to be chosen for two years, and the former for six. It has been a generally received maxim, that frequent and free elections are the greatest security against corruption in government, and the oppression of the people. Have the United States, hitherto, suffered any inconvenience from annual elections? Have their delegates been too often shifted, or too frequently recalled? This, I believe, will not be pretended.

4.10.7 When once the Senators and Representatives are elected, they are under no constitutional check or controul from their constituents, either by instructions, being liable to be recalled, or otherwise. It is not in the power of the citizens or the legislature of any particular State, nor of all the citizens and legislatures of all the States, either to give any legal instructions to a single member of Congress, or to call him to account for any part of his conduct relative to the trust reposed in him. He may be impeached by the House of Representatives, provided he conducts [himself] in a manner that is offensive to them; but he cannot be convicted in any case, without the concurrence of two thirds of the Senators present.

4.10.8 The Congress are to have *power to levy and collect taxes, duties, imposts and excises,* at their discretion; and out of this revenue, to make themselves such compensation for their services as they may think proper.

Is it altogether certain, that a body of men elected for so long a term,—rendered thus independent, and most of them placed at the distance of some

hundreds of miles from their constituents, will pay a more faithful regard to their interest, and set an example of economy, more becoming the circumstances of this country, than they would do, if they were annually elected, subject to some kind of instructions, and liable to be recalled, in case of male administration? Have the several states, in the estimation of the compilers of this Constitution, been hitherto, so parsimonious and unjust in paying their delegates, that they have rendered themselves unfit to contract with their Senators and Representatives, respecting a compensation for their service? If so, what may we suppose will be considered as a just compensation, when this honourable Body shall set their own pay, and be accountable to none but themselves?

(*The remainder in our next.*)

18 December 1787

(*Concluded from our last.*)

It will probably be urged, "Our State Legislature set their own pay; and why should not Congress do the same." 4.10.9

If the cases are similar, the reasoning may be good; but there is a wide difference between them. The members of our State legislature are annually elected—they are subject to instructions—they are chosen within small circles—they are sent but a small distance from their respective homes: Their conduct is constantly known to their constituents. They frequently see, and are seen, by the men whose servants they are. While attending the duties of their office, their connexions in general, are with men who have been bred to economy, and whose circumstances require them to live in a frugal style. They are absent from their respective homes but a few days, or weeks, at most. They return, and mix with their neighbours of the lowest rank, see their poverty, and feel their wants.—On the contrary: The members of Congress are to be chosen for a term of years. They are to be subject to no instructions. They are to be chosen within large circles: They will be unknown to a very considerable part of their constituents, and their constituents will be not less unknown to them. They will be far removed, and long detained, from the view of their constituents. Their general conduct will be unknown. Their chief connections will be with men of the first rank in the United States, who have been bred in affluence at least, if not in the excess of luxury. They will have constantly before them the enchanting example of Ambassadors, other publick Ministers, and Consuls from foreign courts, who, both from principles of policy, and private ambition, will live in the most splendid and costly style. Men are naturally enough inclined to vie with each other. Let any body of men whatever be placed,

from year to year, in circumstances like these; let them have the unlimitted controul of the property of the United States; and let them feel themselves vested, at the same time, with a constitutional right, out of this property to make themselves such compensation as they may think fit: And then, let any one judge, whether they will long retain the same ideas, and feel themselves under equal restraints as to fixing their own pay, with the members of our state legislature. This part of the Constitution, I conceive to be calculated, not only to enhance the expense of the federal government to a degree that will be truely burdensome; but also, to increase that luxury and extravagance, in general, which threatens the ruin of the United States; and that, to which the Eastern States in particular, are wholly unequal.

4.10.10 By this Federal Constitution, each House is to be the judge, not only of the elections, and returns, but also of the *qualifications* of its members; and that, without any other rule than such as they themselves may prescribe. This power in Congress, I take to be equal to that of a negative on elections in general. And the freedom of elections being taken away, where is the security or liberty that is reserved to the citizens under this federal government? But as if this were a light thing, and the liberties of the people not sufficiently cramped by their election being thus exposed to a negative, at the pleasure of each House; the Congress are also vested with the power of prescribing, not only the times and manner of holding elections for Senators; but, the times, manner and *places* of holding elections for Representatives. There is undoubtedly, some interesting and important design in the Congress being, by the Constitution, thus particularly vested with this discretionary power of controuling elections. Will it be urged that, as to such particular times and *places* for holding elections as may be most convenient for the several States, the Congress will be more competent judges than the citizens themselves, or their respective legislatures? This, surely, will not be pretended. The end then of placing this power in the hands of the Congress, cannot have been, the greater convenience of the citizens who are interested and concerned in those elections. But whatever may have been the *design,* it is easy to see that a very interesting and important use may be made of this power; and I can conceive of but one reason why it should be vested in the Congress; particularly as it relates to the *places* of holding elections for Representatives. This power being vested in the Congress, may enable them, from time to time, to throw the elections into such particular parts of the several States where the dispositions of the people shall appear to be the most subservient to the wishes and views of that honourable body; or, where the interests of the major part of the members may be found to lie. Should it so happen (as it probably may) that the major part of the Members of Congress should be elected in, and near the seaport towns; there would, in that case, naturally arise strong inducements for fixing the places for holding elections in such towns, or within their vicinity. This would effectually exclude the distant parts of the several States, and

the bulk of the landed interest, from an equal share in that government, in which they are deeply interested.

4.10.11 There is nothing in the Constitution that determines what shall be considered as an election of a Representative. The Representatives are to be chosen by the people; and where there are a number to be chosen, it is, perhaps, not very likely that any one gentleman will have a majority of all the votes. Those who may appear to have the greatest number of votes must, therefore be considered as being elected.—I wish there never might be any competition between the landed and mercantile interests, nor between any different classes of men whatever. Such competitors will, however, exist, so long as occasion and opportunity for it is given, and while human nature remains the same that it ever has been. The citizens in the seaport towns are numerous; they live compact; their interests are one; there is a constant connection and intercourse between them; they can, on any occasion, centre their votes where they please. This is not the case with those who are in the landed interest; they are scattered far and wide; they have but little intercourse and connection with each other. To concert uniform plans for carrying elections of this kind is intirely out of their way. Hence, their votes if given at all, will be no less scattered than are the local situations of the voters themselves. Wherever the seaport towns agree to centre their votes, there will, of course, be the greatest number. A gentleman in the country therefore, who may aspire after a seat in Congress, or who may wish for a post of profit under the federal government, must form his connections, and unite his interest with those towns. Thus, I conceive, a foundation is laid for throwing the whole power of the federal government into the hands of those who are in the mercantile interest; and for the landed, which is the great interest of this country to lie unrepresented, forlorn, and without hope. It grieves me to suggest an idea of this kind: But I believe it to be important, and not the mere phantom of imagination, or the result of an uneasy and restless disposition.[4] I am convinced of the candour and liberal disposition of gentlemen who are now in the seaport towns, and the mercantile interest; and I am fully persuaded, they desire no such undue advantages over their brethren in the country, who are in the landed interest. But, let a man be *king over Syria;* and he may do things for which he had, before, no disposition. The Constitution is designed for time to come.

4.10.12 The executive power is to be *vested in a President of the United States, who is to hold his office during the term of four years, and who is to be commander in chief of the army and navy, and of the militia of the several States, when called into the actual service of the United States. He is to receive for his services, at stated times, a compensation which shall not be increased nor diminished during the term for which he is elected.* This compensation must, and ought, to be suited to the dignified station in which that officer is placed, which cannot be considered as far below that of an European Monarch. Elective Monarchies, wherever they have obtained,

have generally been attended with the most dreadful consequences. And I am not without fear that venality and corruption may shortly be found among some of the least calamities that will attend those elections. At no very distant period, we may expect the most violent competitions between individual aspiring men, between particular States, and between the Eastern and Southern States.[5] When this shall take place, it will be natural to seek, and easy to find, sufficient pretences for recourse to arms.

4.10.13 *The judicial power of the United States is to be vested in one Supreme Court, and in such other Inferior Courts as Congress may from time to time ordain and establish. The Judges of both are to hold their offices during good behaviour, and at stated times, to receive for their services a compensation, which shall not be diminished during their continuance in office.*— From the great variety of cases to which this judicial power is to extend, it is apparent these courts must be numerous. And as the judges are, at stated times, to receive from the publick, a compensation for their services, this must add a very considerable sum to the expence of government. Every trifling controversy of twenty shillings, or less, *between citizens of different States,* must be brought, it seems, before one of these Federal Courts. The great number of publick men that must be supported on the plan of this Constitution, in addition to the governments of the particular States, must lay a burden on the citizens which there is reason to fear, will prove insupportable.

4.10.14 The publick mind, I fear, is at this critical juncture, prepared to do the same that almost every people, who have enjoyed an excessive degree of liberty have done before;—to plunge headlong into the dreadful abyss of Despotick Government.—At the time of forming the Confederation, the publick rage was on the side of liberty. The reigning disposition then was, to secure the highest degrees of liberty to the people, and to guard against every possible instance of oppression in their rulers. The consequence is, want of sufficient energy in government. We have had a surfeit of liberty; and, to many, the very name has now become nauseous.

4.10.15 That the Congress ought to have further powers than those with which they are vested by the Confederation, no reasonable man will deny. That this is absolutely necessary, in order that the United States should continue much longer to exist, with any tolerable degree of reputation, I am fully convinced. But that the Congress, or any other body of men, should be vested with all those independent and unlimitted powers prescribed in the Constitution, appears to me, by no means necessary. Considering the principles by which publick bodies are generally influenced, I am very apprehensive, that if this Constitution is adopted, the remedy proposed will, in no very distant period of time, prove, at least equally distressing with the disease itself. The strength and energy of government does not, I conceive, so much consist in particular men, being vested with unlimitted powers, as it does in a due regulation of the necessary powers with which they are vested,

and in effectual provision for the exercise of those powers. It is possible, I believe, for government to be weak in the hands of a Despot, and strong, where considerable degrees of liberty are enjoyed.

We have practiced but a few years on the Confederation; long enough however, to discover its principle defects. The great embarrassments under which we have laboured, are found, I imagine, to have risen from the want of a revenue, and a general regulation of trade. If Congress (continuing in all other respects, to possess the same powers which they do at present) were vested with the further power of laying and collecting taxes, duties, imposts, and excises, and with the exclusive right of regulating Commerce, I believe our federal government would be as firm and happy as might reasonably be expected to fall to the lot of humanity, in this state of imperfection. 4.10.16

If it is indeed necessary that we should have a President, vested with the powers prescribed in the Constitution, I am fully persuaded that rather than that he should be elected in the manner therein described, and for the term limitted, it would be attended with consequences less pernicious, at once, to make the office hereditary, and during life. This would, at least, prevent that rivalship, venality, corruption, and tumult, which may be expected, sooner or later, to attend those elections. 4.10.17

If it is further necessary, that a Judicial Court should be constituted, whose powers shall extend to certain cases of national importance; this, I apprehend, may be done with equal advantage, and less inconvenience, without multiplying those courts in the manner which the Constitution prescribes. 4.10.18

In the case of direct taxation, the rule of apportionment among the several States, I take to be very unequal, and in its operation, will prove exceedingly injurious to the Eastern States. These States, compared with the Southern, have always abounded in people more than in wealth; and from the nature of their climate and soil, will forever continue to do the same. Yet, by this rule of apportionment, a great allowance is made in favour of the Southern States: Three persons, including those bound to service for a term of years, being reckoned equal to five slaves. In the Eastern States there are but few slaves. In Massachusetts, there are none. There are in that State, a large number of negroes; and in apportioning the taxes, three of these negroes are to be reckoned equal to five in the Southern States. 4.10.19

When I consider the independent situation in which the members of Congress are placed,—the sovereign right of controuling elections, which that honourable body are to possess,—the discretionary, and unlimited power, vested in each House, to judge of the qualifications of its members; and that by such rules only as they themselves may prescribe, and alter as they please,—the unbridled temptations that will be constantly before them to aggrandize themselves, their connexions, and friends, at the expense of their constituents, and the unbounded opportunity they will have to do this: I am constrained to believe, that the principles on which the Constitution is 4.10.20

predicated, are such as tend to a government of *Men*, and not of *Laws*. And notwithstanding the high encomiums that are bestowed on this form of government, I shall be most disagreeably [agreeably?] disappointed, if it does not prove, in its operation, to be one of the most unequal, arbitrary, oppressive, venal, and corrupt governments that is extant.

4.10.21 I am sensible that the office of President of the United States is, in some respects, different from that of King of Great-Britain; and also, that the powers of the Senate are, in some measure, different from those of the House of Lords: Yet, either the one, or the other, existing in America, might be pernicious to the people. And it may be yet uncertain, whether, in every instance wherein they differ, the difference is in favour of the Federal Government.—In offices that are elective, where the elections are liable to embarrassments, or exposed to venal and corrupt influence, it may admit of some doubt, whether the man of the greatest integrity, or the man of the greatest intrigue, stands the fairest chance for preferment!

4.10.22 Thus I have ventured, with freedom, and I hope, with candour, to express my own ideas on this interesting and important subject. I have no disposition to kindle a flame, nor to excite any groundless fears, in the minds of my fellow citizens. I most ardently wish for an efficient, firm, and permanent *system of government;* and at the same time, that the people at large may enjoy as much liberty and ease, as may be consistent with such a government.

Cornelius.

1. See Symmes, 4.5.14 n. 5.
2. The original reads, "solemly."
3. See Republican Federalist III, 4.13.15 n. 11.
4. Charles Beard quotes Cornelius on the competition between the landed and mercantile interests as "probably the most reasoned statement of the antagonism of realty and personalty in its relation to the adoption of the Constitution in Massachusetts"; but Brown correctly points out that Cornelius does not support Beard's specific thesis. Beard, *An Economic Interpretation of the Constitution* 305–6; Robert E. Brown, *Charles Beard and the Constitution* (Princeton 1956) 187. The description of the proponents of the Constitution by A [New Hampshire] Farmer, which Beard apparently did not see, is closer to his thesis (4.17.8).
5. Randolph wished to avoid the divisiveness of fights over the executive by providing a plural executive. See Farrand I, 66 (1 June), 88 (2 June).

Essay by Poplicola

BOSTON GAZETTE AND THE COUNTRY JOURNAL
24 December 1787

Replying to a comment made by Thomas McKean in the Pennsylvania ratifying convention that a well-administered despotism is the best form of government, Poplicola elaborates on the Anti-Federalist themes of the danger of relying for good government on the virtue of the rulers and the evils of monarchic and aristocratic governments. The essay appeared on the same day, 24 December 1787, in both the *Boston Gazette and the Country Journal* and the Boston *American Herald;* it is taken here from the former.[1]

1. This essay is dated incorrectly by Charles Warren in his article "Elbridge Gerry, James Warren, Mercy Warren and the Ratification of the Federal Constitution in Massachusetts," Massachusetts Historical Society, *Proceedings* LXIV (1932): 147 n. 6.

Messieurs Edes,

Mr. McKean, says a Philadelphia paper, closed a long speech on the legislative article of the new Constitution with this striking observation: "Though a good system of government is certainly a blessing, yet it is on the *administration* of the best system, that the freedom, wealth and happiness of the people depend."[1] There is nothing, I confess, so striking to my mind in this observation—A good system of government may be, and too often is, administered by weak and corrupt men; and while this is the case, the people will suffer injury. The fault then will be not in the system, but in the administration; though many persons, when they see public affairs badly managed, are apt to ascribe it to the wrong cause; and hence they wish to change the very nature of a good Constitution; and very frequently change for the worse. The *Federalists,* as they call themselves (improperly in my humble opinion) seem to be aware that the plan offered by the late Convention will not endure a strict scrutiny; they wish, however, that the people would adopt it in its present form, and depend on a wise administration. But do they think the people of America, after so magnanimous and arduous a conflict for the rights of mankind, will be so *improvident* as to adopt a form which they may not think safe for themselves, and their posterity, because Mr. McKean thinks, as we find in another part of his speech, that even the 4.11.1

worst government *may* be so administered as to ensure the dignity and happiness of a nation?[2] I presume they will not—Let us aim at a *Federal* Constitution, calculated to establish the *Federal* Union of these sovereign States, and secure the liberties of the people; and having fixed upon *such* a Constitution, we shall even then have enough to do, if we turn our utmost attention to the means of having it administered well. This would be acting up to the character of citizens of a free sovereign and independent State.

4.11.2 But there is one observation made by that honorable gentleman, in the same speech, which, to me, appears *striking* indeed, "DESPOTISM, (says he) if wisely administered, *is the best form of government ever invented by the ingenuity of man!*["] I cannot but wonder that such a sentiment should fall from the lips of Mr. McKean, who is undoubtedly a man of sense and knowledge—In the course of his studies in the law, and from his other reading, I should have thought he would have been led to a different conclusion.—Is *Despotism* then the offspring of human ingenuity? No. In societies of men, it springs from an intolerably haughty, and imperious temper—an insatiable lust of domination; and from servility and ignorance in multitudes of the human race, who have been flattered and coaxed to give up their unalienable rights of nature, by degrees, till the tyrant has become strong enough to invade the whole, and immerge the deluded multitude in slavery and wretchedness. For my part, I do not believe there is a man on earth, to whom it would be safe for the people to intrust the powers of a despot, whose will must be their law—I would not trust him however mild and gracious his natural temper might be. *Nero,* was said to be blest with a kind and affectionate heart; but the powers of a despot intoxicated his mind—He soon became wild and unruly, as the most untameable beasts of the forest—Every tender feeling was eradicated from his soul, and he was the butcher of the *subjects* (not *citizens*) of Rome in a very few years.—Fatal experience has taught the world, that despotism has proved ruinous to the dignity and happiness of men—*Despots* have very rarely, if ever, had wisdom, integrity and other essential qualities, to "administer" their governments "wisely;" and they have as seldom had inclination to spend a thought about it. The Supreme Being, indeed, governs the Universe by the council of his own understanding; and if all his creatures are not happy under his government, it is owing to their imperfection, or their fault. He alone is perfectly wise, powerful, and good—He leaves it to the wisdom of men to institute governments for themselves, and it must be owned that the wisest human institutions are *imperfect*—But it is exceedingly clear, from the government which He prescribed for his favourite people, that *despotism* was not *His* choice—They foolishly changed their free government for a monarchy, though they were faithfully warned of the intolerable burdens it would bring them under, which they afterwards felt to their cost without remedy—The pride and madness, not the *ingenuity* of man, *invented* DESPOTISM.

I wish Mr. McKean would again recur to the histories of Despotic Governments, and see how many of the tyrants have treated their people with savage and brutal barbarity, to one who govern'd with a tolerable degree of mildness and wisdom: Even under the best of them, their forlorn subjects hold their property, their liberties, and lives, on no better a tenure than their sovereign pleasure—I have seen and experienced so much of the depravity and weakness of the human mind, that I hope these States will never be prevailed upon to relinquish a greater share of their powers, to the Federal Union, than is sufficient to give the government a degree of energy, adequate to the emergencies of the Union; and that while they chearfully do this, they will wisely guard those rights and powers which shall remain, and watch with *republican* jealousy against the least encroachment on them. 4.11.3

Mr. McKean, after speaking of the *Supreme* excellency of DESPOTISM, IF wisely administered, mentions absolute and limited monarchies, aristocracies, and mixed governments, and says the people under each of them "are as *contented* and prosperous as we are, owing, undoubtedly to the wisdom and virtue of their rulers." Absolute monarchies and hereditary aristocracies are much the same, so far as the people whom they govern, are affected. By gazing at the splendor of a monarch, or a nobility, and being well accustomed to military tyranny, they bow to the yoke and bear it as patiently as their brother-oxen—They drag their heavy loads without repining, and will be *contented,* though they are cruelly whipped for their pains. Whence is this abject submission? From their ignorance.—Slavery renders them incapable, even of thinking—The means of information are kept from them, and they have not the idea that men were designed to be free, and that some communities, alas! how few! actually are free. England is a limited monarchy, and a mixed government—The people of that nation must be allowed, to be very *contented;* for they have seen their nation governed by a junto—They have seen that junto purchasing parliaments to give a sanction to all their profligate measures—They have seen the junto raising and keeping a standing army in a time of profound peace: That army murdering peaceable and quiet subjects, and the murderers pardoned—And they have seen that junto employing an army and navy for the most dishonorable purpose of slave-making in America, and finally squandering away thirteen of their richest jewels! and after all they have scarcely breath'd a murmer.—God Almighty grant, that these United States may never be ruled by a *junto,* or if they should be so unfortunate, may they not long rest *contented* under it! 4.11.4

Poplicola.

1. Poplicola refers to a report in the *Pennsylvania Packet,* 3 December 1787, of a speech by Thomas McKean in the Pennsylvania ratifying convention on 28 November 1787. The report reads as follows: "On Wednesday [28 November] Mr. M'Kean closed a long speech on the legislative article of the new constitution with

this striking observation: 'Though a good system of government is certainly a blessing, yet it is on the *administration* of the best system that the freedom, wealth and happiness of the people depend. DESPOTISM, if wisely administered, *is the best form of government invented by the ingenuity of man,* and we find that the people under absolute and limited monarchies, under aristocracies and mixed governments are as contented and as prosperous as we are, owing, undoubtedly, to the wisdom and virtue of their rulers. In short, the best government may be so conducted as to produce misery and disgrace, and the worst so administered as to insure dignity and happiness to a nation.' ''

Another version was reported in the *Pennsylvania Herald,* 26 December 1787: ''And after all Mr. President, though a good system is certainly a blessing, yet the wealth, the prosperity, and the freedom of the people, must ultimately depend upon the administration of the best government. The wisdom, probity and patriotism of the rulers, will ever be the criterion of public prosperity; and hence it is, that despotism, if well administered, is the best form of government invented by human ingenuity. We have seen nations prosperous and happy under monarchies, aristocracies, and governments compounded of these, and to what can we ascribe their felicity, but the wise and prudent conduct of those who exercise the powers of government? For experience will demonstrate that the most perfect system may be so perverted as to produce poverty and misery, and the most despotic so executed as to disseminate affluence and happiness among the people.'' Both of these may be found in McMaster and Stone 280, 282. For other Federalist arguments about the critical importance of good administration see Elliot II, 254 (Hamilton); *The Federalist* no. 17, 107; no. 27, 172–74; no. 46, 316–17. For other Anti-Federalist discussions of this theme, see Federal Farmer I, 2.8.1 n. 3.

2. On the reliance by the Federalists on good men in office, see Federal Farmer VIII, 2.8.110 n. 72.

Essays by Helvidius Priscus

(BOSTON) INDEPENDENT CHRONICLE
and MASSACHUSETTS GAZETTE
December 1787–February 1788

In a letter to Rufus King on 30 December 1787, Christopher Gore wrote that "S. Adams is out full *against it*. There is ev'ry reason to conclude him the author of Helvidius Priscus in Adams and Nourse of last Thursday."[1] Charles Warren, on the other hand, contends that the author was General James Warren.[2] It must be admitted that the reader's interest in Helvidius Priscus, stimulated by his having been one of these notable Old Patriots, finds little sustenance in the essays themselves. The author opens with an attack on James Wilson and on the propriety of the conduct of the federal convention. Warning against the loss of liberty threatened by the so-called federal republic, he urges the Old Patriots to come forward and resist this departure from the principles of "the late glorious revolution." The remaining essays are taken up mainly with discussions of personalities, the machinations of the aristocratic faction, and the "gilded trap" they have set. There are two pairs of essays, the first published in the Boston *Independent Chronicle*, the second in the *Massachusetts Gazette*.[3]

1. King, *Life and Correspondence* I, 266–67.
2. Warren, Massachusetts Historical Society, *Proceedings* 64 (1932): 155–56. Warren's argument is in this instance not especially persuasive. It rests on the fact that a correspondent to the *Massachusetts Gazette* later said that the same man wrote the Helvidius Priscus and the Republican Federalist series (see 4.13); since James Warren quite clearly wrote the latter, he must have also written the former. The difficulty is that no reason is given for giving greater weight to the testimony of this Massachusetts correspondent than to that of Gore. On James Warren, see 4.13 intro.
3. Warren quotes some of the invective that these essays stimulated in reply. Massachusetts Historical Society, *Proceedings* 64 (1932): 156.

INDEPENDENT CHRONICLE
27 December 1787

To the Public.

Mr. WILSON observes, in his late celebrated speech, "that after a lapse of 4.12.1

six thousand years, America has now presented the first instance of a people asembled to weigh deliberately, and calmly, and to decide leisurely, and peaceably, on a form of government, by which they shall bind themselves and their posterity."[1] Has he not here suggested the strongest reason that can be urged, for postponing the adoption of the new system? If the assertion is true, is it prudent for this extensive Continent implicitely to accept, and rapidly and irrevocably adopt, the propositions of thirty or forty men, some of whom were infants, when the principles of the late revolution animated the patriots of this country to a noble resistance, and led them to bear the bold arm to shake the sceptre of foreign dominion: And as Mr. WILSON himself observes, "Government is a science as yet in infancy; and with all its various modifications, has been the result of force, fraud or accident."[2] May not these gentlemen be considered as yet in their pupilage, with regard to the origin, the end, and the most perfect mode of civil government? It is also well known, that some of the late Convention were the professed advocates of the British system; that others stood suspended in equilibrio, uncertain on which side to declare, until the scale of fortune balanced in favour of America; that the political manoeuvres of some of them have always sunk in the vortex of private interest, and that the immense wealth of others has set them above all principle. These several classes selected, a correspondent would inquire; how many of the disinterested worthies who ventured every thing for the support of the rights of their country, and the liberties of mankind, will be left to adorn that assembly, who have ambitiously and daringly presumed (without any commission for that purpose) to annihilate the sovereignties of the thirteen United States; to establish a DRACONIAN CODE; and to bind posterity by their *secret councils?* It may perhaps be replied that one third part of the body were of this generous description. Let us candidly grant it and examine their conduct; several of them left the assembly in disgust before the decision of the question. Others expressly reprobated the proceedings of a *conclave*, where it has been ridiculously asserted all the wisdom of America was concentered; and a RANDOLPH, MASON, and GERRY, had the firmness to avow their dissent; to support their opinions in the Legislatives of their several States; and submit them to the observation of the world.[3] It is true indeed that the *ancient Doctor*, who has been always republican in principle and conduct, doubted, trembled, hesitated, wept, and signed: While the illustrious President, not called upon to decide or necessitated to give his opinion, kept the chair, but undoubtedly painfully agitated for the fate of a country he had heroically lent his arm to defend.[4] All the powers of eloquence are exerted to catch the ear; and the utmost pathos of expression employed to warm the imagination, in Mr. WILSON's insidious speech; but as it will doubtless be the subject of critical discussion by those who have leisure to examine both its principles, and its tendency, I will but cursorily observe that he discovers no less *dexterity* and *address*, in his oratorical explanation of the system, then he acknowledges was necessary to *reconcile the jarring*

interests that opposed it[5]—and finally to prevail with several whose objections were insurmountable, to lend their signature to an instrument for which he is obliged to ransack the annals of ancient and modern story to find a name. But he acknowledges that neither *Rome*, nor *Britain*, nor *Switzerland*, or *Holland*, bear much resemblance to the newly fabricated *federal republic*.—And that he cannot find a precedent any where for the *Heterogeneous Monster*, unless it may be admitted in the *Lycian league* of the *Amphictionic Council*.[6] It is here natural for every one acquainted with ancient history to turn their thoughts to the miserable fate of the *Lycians*. They were a sober, and virtuous people, who maintained their independence, and their freedom, for several centuries; and supported their own simple institutions, under twenty-three distinct sovereignties; until the reign of *Leomitian*, when they fell under the Roman yoke, with other cities of Greece, while the *tyrant* alledged the same excuse for his encroachment, that we hear hacknied in the streets of our capitals, for subjugating the Americans to the arms of power *because they were no longer capable of enjoying their liberties*. Nor is *Mr. Wilson* more fortunate in calling our attention to the ruin of the Amphictionic union. Every one will recollect that the *Locrians*, (a people bearing a strong resemblance to a party in America) had crept in among them, and that an ambitious *Phillip* had his emisaries in that body, who by political intrigue, and well-timed *plausible speeches*, enabled him by the aid of a *standing army*, to set himself at the head of the Grecian States; to annihilate their constitutions, and to degrade them to the most abject submission to the will of a despotic tyrant. The application and the semblance is left for the consideration of every lover of his country.

America has fought for her liberties; she has purchased them by the most costly sacrifices; she embarked in the enterprize with a spirit that gained her the applauses of mankind; and procured her emancipation from tyranny by the blood of her heroes, and her friends. And shall her honour, her character, her freedom, be sported away by the duplicity, and the intrigues of those, who never participated in her sufferings? Or by the machinations of such as have no pole star for their guide, but the mad ambition of a mind ready to sacrifice the finest feelings of humanity for its gratification? FORBID IT HEAVEN! and may the people awake from a kind of apathy which seems to pervade them, before they are aroused by the thunder of arms, or the insolence of dragooning parties, to arrest from the peasant, and the mechanic, the last farthing of their hard earnings, to support the splendid fabrick of *Mr. Wilson's* FEDERAL REPUBLIC. What an insiduous term! But this people are too wise to be long deceived by the extortion, or misapplication of words. Let the youth of America, who are yet ignorant of the characters, and the causes that occasioned the dismemberment of the United States from the crown of Britain, read for themselves the many excellent publications, on the origin of government, and the rights of human nature, that appeared between the year 1763 and 1775.—And instead of indulging a raptuous admiration for the modern superficial speechifyers in

4.12.2

favour of an American monarchy; let them examine the principles of the late glorious revolution, and see how far they comport with the opinions in vogue.[7] And before they embrace the chains of survitude, let them scrutinize their own hearts, and inquire, if their pride and their independency of spirit, will suffer them to lick the hand of a despotic master. And may the delegates for the ensuing convention consider well the importance of their decision. They will be applauded by the admiring world for making a stand at this critical conjuncture; or they will be execrated by all posterity for co-operating with the ambitious and intriguing spirits, who wish for the sake of their own advancement, to manacle a free and independent people, who have made the most astonishing and successful exertions to support their own rights, and to establish their rank among the nations. And when they shall have time to look around and be convinced, even *Mr. Wilson* acknowledges, *"they will then spurn at every attempt to shackle them with despotic power."*[8]

4.12.3 Let them call for the name of the audacious man, who dared to say to his associates, in the late convention, *"that unless they hurried the constitution through before the people had time for consideration, there was no probability that it would ever be adopted."*[9] And let him be stigmatized with the odium that is due to the base betrayer of the rights of his country, and not absurdly trusted, though he may artfully have obtained an election, to decide a second time on a question in which he is so manifestly interested.

4.12.4 It is obvious that there is not the smallest propriety that any of the members of that body, who have held out a system for the people to judge of, should themselves set in any of the State conventions, and have a voice to enforce their own alarming proceedings.

Let the old Patriots come forward, and instead of secretly wraping up their opinions within their own breasts, let them lift up the voice like a trumpet, and shew this people their folly, and the trembling *Columbia*, her impending danger. Let none of them fear the arbitrary frown of either Otbo, Galba, or Vitellius, nor the fate of

Helvidius Priscus.

INDEPENDENT CHRONICLE
10 January 1788

To the Public.

4.12.5 The three pillars lately erected at the southward, are like the hanging towers of Pisa, to be proped up and cemented by the blood of posterity, if ever they stand at all; for the present generation have too strong a sense of the rights of nature, of the sufferings experienced for their re-establishment, to set

down passively under a tottering pile, erected on pillars of porcelain—and if half a dozen others should yet be added to the guilded dome, it will still be astonishingly defective; as the artificers have hurried it through for their own present accommodation, without one solid heart of oak to support an edifice, whose wings extend to embrace the territory from the Mississippi, to the chain of lakes, and from the inland seas to the eastern shore.—An ancient historian has left it on record, that the first monarch after the Achoean league, who gained an entire influence over their councils, was possessed of all the virtues that endear a king.—"A lively genius, an uncommon understanding, an happy memory, an agreeable utterance, an unaffected grace in all his actions—He possessed a beautiful aspect, heightened by a majestic air, which bespoke the greatness of his mind, but his brightest virtues were the sweetness of his temper, his affability and great desire to please and content all who were under his government."—But alas! he was a man—he was a king—and let America be admonished, that in the plenitude of uncontrouled power, the same historian adds, that he so forfeited this great character, and from a glorious king became an inhuman tyrant.[10] Mankind have always been lulled by sounds into a fatal security, without giving themselves the trouble of investigation. Yet it is not probable the metaphisical disquisitions of a *southern doctor,* will persuade the world that the majority of the late CONVENTION were so much the peculiar favourites of heaven as to receive an immediate inspiration for the model of a government,[11] that should subjugate a country which appears to those who are really religious, and who believe in a providential direction, to have been remarkably under divine protection in the various steps that led to its independence. But why was the small minority (who could not in conscience accede) denied their share in this heavenly illumination?—and why was the aged *Dr. Franklin,* so darkened in his councils, as to make a motion, that the President should have no sallary? and to oppose almost every article in the system till the last, when he lent his signature in tears? or were those tears the result of a late revelation, that the system was fairly deduced from heaven; though it might involve America, first in anarchy, and then in despotism.[12] But the men who have denied the authenticity of the decalogue, and perhaps the divine origin of the gospel, may sport with the credulity of mankind—and droll on the miraculous interpositions of heaven, under an appearance of an enthusiasm for truth, if it will operate to the completion of a favourite system, while yet the honour of the gentleman is secure from falshood, when he asserts that he believes "the finger of God was as much employed in fabricating the foederal republic as in dictating the ten commandments; and that the divine origin of the new system is as much the object of his faith, as the division of the red sea, or the fulmination of the law from Mount Sina."[13] But as the gentlemen of the medical faculty have not all of them been the most remarkable advocates for divine inspiration; or the most distinguished in vindicating the sacred oracles of religion, we are glad if the learned *Dr. Rush* is an exception.

4.12.6 If he has really a sober sense of divine dispensation, it is to be regreted that a man of understanding should suffer his language to wear the guize of enthusiastic rant; But if he is one of the fashionable sceptical race, it is not strange when a darling point was to be urged, that he should indulge such epithets of impious affectation to fall from his lip, as shocks the feelings of those who revere the code of the supreme lawgiver. While the Roman usurper was ravaging Gaul, whenever it was convenient for their purposes, his commissioners consulted the Pagan oracles, and when the people were prepared by their love of pleasure, and prostration of principle, to bow to the yoke of servitude, he was pronounced from the lip of the Cybles, the destined master of the world; yet we do not find that *Caesar,* though *Pontifex Maximus* or *Curio,* who was purchased by his gold, had either of them much religion, and when it became necessary for the purposes of the tyrant, a *Claudius* was found to get a law enacted that no regard should be paid to the denunciations of the augurs. But the augurs who profess a more perfect religion, without pretending to immediate inspiration, will venture to predict, that the characters of the respected minority in the grand convention, and the names of FINDLEY, SMILIE, and others in *Pennsylvania,* and a much longer list in the Massachusetts, instead of sinking into contempt, will stand distinguished in the annals of fame, for opposing with the magnanimity of genuine patriotism, a combination of ambitious spirits, exorbitant wealth or squandered fortune, of men of licentious principles, and heated imaginations, and of a few of more conscientious opinion, who from the early rudiments of education and manners, have always had a predilection in favour of arbitrary government. But in the exultation of party, let them not again in the convivial hour, toast the memory *of the heroes who sacrificed their lives in defence of the liberties of America*—least the pale spectres should appear as the evil genius of Brutus, and summon them to the shades, though not to die like the Phillippian Hero, in the last glorious struggle for freedom, but in the ignoble effort to consign posterity to the manacles of slavery.

Helvidius Priscus.

MASSACHUSETTS GAZETTE
22 January 1788

To the Publick.

4.12.7 The convention of Massachusetts has now met, and on their decision, in a great measure, depends the fate of America. This state has, from the beginning of the contest with Britain, been distinguished for her wisdom in counsel, her zeal in opposition, and her energy in baffling the arts of power, and

counteracting the intrigues of foreign and domestick foes, who wished not long ago to deprive her of her rights and to annihilate her as a state. On every trying occasion this state has stood foremost in the union, and done itself honour by its perseverance and independency of spirit—She has once more an opportunity of asserting her own dignity, by rejecting or essentially amending a system, calculated to involve in a *servitude*, too complicated to be described, till its dreadful effects are experienced, when they may BE FORBIDDEN TO COMPLAIN. But if they have chosen a set of delegates, of sufficient integrity and ability, they may yet be instrumental in saving all America from a THRALDOM, which may be foreseen without the aid of *inspiration*. But if there should be a *temporising*, an *ignorant*, or a *designing majority*, ready to accede, from *fear*, from *folly*, or *interest*, and bow the neck to the MISHAPEN IDOL, held out for the adoration of the United States, it requires no uncommon sagacity to discover, that their doings will involve this country in blood, render themselves the contempt of the best of their fellow-citizens, and the execration of posterity.

We are told, that only 25 out of 130 members, convened in the three states 4.12.8
of Pennsylvania, New-Jersey, and Delaware, had the wisdom, the firmness, and the patriotism, to reject the adoption of the proffered system of arbitrary government—an humiliating proof this of the local prejudices, the narrow views, and the selfish motives, by which mankind are too generally actuated—If all the wealth of America was to center in Boston, in consequence of its adoption; if Cambridge was to be made the federal city, and the fountain of all honour was circumscribed within the limits of ten miles—If the avaricious citizen, the ambitious courtier, and the ardent youth, from all parts of the continent, who are in quest of honour and emolument, were to repair and do homage for the idol in this favoured city, and to disseminate their wealth in its neighbourhood, no doubt the mechanicks, the macaronies, and the miserly part of Boston, and perhaps a majority in Convention, might think it good policy to adopt a system that would enrich and ennoble their own state—though even then gentlemen in the distant counties would have little reason to precipitate the plan. But view the reverse—Philadelphia is the central city; and a thousand circumstances will combine to sink the population, the wealth, and the consequence of Boston;[14] so that, both in a general and in a local view, we cannot but hope, that in a convention of *three* or *four hundred men*, of Massachusetts, a large majority will be found too wise to relinquish their own sovereignty and independence, and too just to violate the present excellent constitution of this state, and break the bands of the sacred compact, which the new arrangement would annihilate, and bring them down to the *degraded dependents on a splended monarchy, that will wring from them and their children their last farthing for its support*. We have seen much scurrility and abuse indiscriminately cast on all who are not mad enough, with their eyes open, to put a *yoke* on their necks, which neither themselves nor posterity will be able to break. But we see neither reason, argument, or necessity for

this country to renounce their best privileges, because *officiously* advised thereto by a set of men acting entirely out of the line of their commission. But the *Landholder,*[15] without *veracity*—the *New-England Damper,*[16] without *any thing*—and a long *etcetera* of signatures, without principle or perspicuity, will never damp the ardour of liberty, nor check the energy of the able supporters of those genuine principles that mark, with dignity, those who have again stepped forth to defend, in its last struggle, that freedom and independence of spirit, which has made this country the admiration of the philosopher, the hero, and the statesman.

4.12.9 It is not material whether the federal farmer belongs to Virginia or Kamtschatka—whether he owns five hundred negroes, or is a man of no property at all—if his arguments are cogent—his reasonings conclusive—if the consequences of adopting the new system are fairly drawn, and the most certain despotism deduced from the principles of its fabrication, the intricacy and extent of its designs, and the fatal consequences of its operation. Nor is it of consequence to the publick, or to the general cause, whether mr. *Lee* is an enemy, or a devotee to the fame and to the merit, of general *Washington,* or whether mr. *Gerry* refused his signature to the new constitution, in consistance with his former character, from enlarged and distinguished views to the general welfare, or from the pitiful consideration of a few publick securities in his pocket: nor will it alter the *deformed visage* of this deceptive system to inquire, whether mr. *Gorham* and mr. *King* embraced it with ardour from the sublimest feelings of *patriotism* and *publick utility,* or *with an eye to the rich harvests that may be reaped on the Delaware.* We are not contending for the characters of men, nor entering into the private disputes and local prejudices of individuals or of states—We wish to view every thing on the broad scale of independence to America—the *sovereignty of the United States,* and *the freedom of the people,* who have a just claim thereto, by the birth-right of nature, and the grant of heaven—sealed with the rich blood of martyrs in her cause.—Every member of the community ought diligently to read and to study the constitution of his country, and teach the rising generation to be free. By knowing their rights, they will soon perceive when they are violated, and be the better prepared to resist and defend them.

Helvidius Priscus.

MASSACHUSETTS GAZETTE
5 February 1788

To the Inhabitants of Massachusetts.

4.12.10 It has been one of the leading arts of the aristocratick faction, to depreciate the abilities of that part of the convention of the Massachusetts who are

opposed to the arbitrary system, which the other supports with the avidity of interest, and the acrimony of contempt for those of less fortune, education, or other factitious advantages than themselves. An impartial observer, who has little personal acquaintance with, nor any undue prejudice against, the one side, or predilection in favour of the other, has read with great attention the speeches of both, on a subject the most important that has yet been discussed in America. He has been willing to discover truth, and ready to pay the tribute of applause wherever it is due, either to the peasant, just called from the field, or to the accomplished citizen, who has spent his life in court; and has faithfully compared the arguments of both, and must acknowledge, that, where he had been led to expect genius, improved by education, oratorical abilities, and profound reasoning, brightened by study and experience, he has been mortified, for the sake of human nature, to find evasion and sophistry; the prostration of the genuine principles of liberty, and the weak subterfuges of party, endeavouring to cast a veil over the design, the meaning and the consequences of a system that does not require the deepest sagacity to penetrate. On the other hand, there seems to be the modesty of benevolence and the boldness of truth, in the short, unadmired speeches which, in the garb of simplicity, utter the native dictates of good sense, uncorrupted by the splendour of wealth, and animated by the feelings of the man who revolts at the idea of relinquishing the privileges of the free-born citizen; and in the more lengthy investigation, a mr. *K[ing]sl[e]y* appears to have as thorough a knowledge of the subject in debate, and to express his ideas of the police of the old and new system, as well as of the rights we possess, and the privileges we are about to relinquish, as some of the gentlemen of the bar, who claim more attention in the assembly, from their different modes of education. Nor will few deny that Dr. *W[i]l[lar]d* has discovered as much knowledge of ancient history, that he speaks as clearly on the subject of intrigue, which has been the ruin of republicks, and that he elucidates the consequence of different governments and combinations, at least with as much precision as mr. *G[orha]m*, without introducing the localities, that occasion a temporary animosity between Connecticut and New-York. The comprehensive view of the subject of taxation, the inconsistency of opinion in those who were lately perhaps over delicate with regard to a general impost, yet are now ready to make the most unequivocal surrender of all their property at the call of a Congress without check or controul—the fatal tendency and the aggregate evils that must be the certain consequence of such an imprudent resignation of the purse and the sword—the anticipated view of the miseries introduced in the *venerable garb of ancestorial sanction,* and the short survey of the complicated mischiefs with which the whole system is replete, are delineated with a patriotick zeal and energy of expression, and in an unaffected style and manner, that does honour to the abilities, as well as to the heart, of *mr. Symms.*[17] But a comparative view of abilities or address, of the justice and

rationality of one cause, or of the absurdities and consequential confusions of the other, are of little avail—The temporizing expedient may probably be adopted: then may your friends in both countries pity the total debilitation of that energetick spirit that has made you the admiration of the speculative man of science in his closet, and has gained you the alliance of some of the first nations in Europe; while your enemies will justly ridicule your wanton waste of blood for the bubble of liberty, which you have suffered to be blown away by the breath of those who never inhaled the smallest breezes from the temple of freedom; and your oppressors will laugh that the *gilded trap* has caught the gudgeons in its net. And when the thin vizard that has been cast before your injured opticks shall fall from your lids, you may find the men, who have lured you to the snare, are the least disposed to meliorate your sufferings. But it is said. YOU MUST ACCEPT AND RATIFY THE PROPOSED CONSTITUTION—Then, with your hands tied behind you, and sackcloth on your backs, you may perhaps be permitted to approach the FEDERAL CITY with supplicatory addresses, to mollify the hard conditions of your subjugation; and among other evils you deplore, you may pray that no direct taxes may be assessed, but when the *exigences* of your *masters* require it. But you will remember the *Caudine Forks* cannot be repassed, without bending the neck beneath the yoke of the *Samnites;* you may then, as the humiliated Romans, in the deepest consternation, look with silent agony on each other, but without discovering a ray of hope in the countenance of the brave, reduced by their own rashness to inextricable wretchedness: Nor will you forget that you have been repeatedly warned of your danger by the friendly pen of

Helvidius Priscus.

1. This is Wilson's important speech of 24 November 1787, McMaster and Stone 222.
2. McMaster and Stone 221–22.
3. See 2.1, 2.2, 2.5.
4. The references are of course to Franklin and Washington. See Centinel I, 2.7.5 n. 2. On Franklin's supposed views, see 4.12.5 n. 12.
5. McMaster and Stone 219.
6. Ibid. 220–221. Wilson says that while the Achaean and Lycian leagues and the Amphyctonic Council bear a superficial resemblance to a federal republic, the accounts of them are too vague to supply either a tolerable theory or the details necessary to practical knowledge. Of the discussion of ancient and modern confederacies in Montesquieu, *The Spirit of Laws* IX; *The Federalist* nos. 18–20; James Madison, "Of Ancient and Modern Confederacies," Madison, *Writings* (ed. Hunt) II, 369–90.
7. "What PRISCUS!" replied Honorius, "are those weapons that were employed against the *foreign* enemies of our country, to be turned against our brethren? No, let them rather turn their thoughts to the contemplation of the *proposed System*. . . ." Boston *Independent Chronicle* 3 January 1788.
8. "Speech Delivered on 26th November 1787 in the Convention of Pennsylvania," Robert G. McCloskey, *The Works of James Wilson* (Cambridge, Mass. 1967) II, 761.
9. The "audacious man" has not been identified.
10. The "ancient historian" has not been identified.

11. Benjamin Rush, Pennsylvania ratifying convention, 12 December 1787, McMaster and Stone 420. See Plebeian 6.11.27 n. 21.

12. The reference is to the distorted version of Franklin's concluding speech that appeared in the *Massachusetts Gazette*, 14 December 1787. See Warren 6.14.48 n. 6.

13. McMaster and Stone 420.

14. Cf. Agrippa VII, 4.6.26; XII, 4.6.58 and n. 31.

15. For the essays of A Landholder (Oliver Ellsworth), see Ford, *Essays* 135–202.

16. The reference here is to the essay of "New England," *Connecticut Courant* 24 December 1787, who identified The Federal Farmer as Richard Henry Lee, and whose aspersions on Lee are answered in the following paragraph here. See 2.8 intro. n. 11.

17. See 4.5.13 n. 4.

Letters of A Republican Federalist

MASSACHUSETTS CENTINEL
December 1787–February 1788

The essays of A Republican Federalist were probably written by James Warren, Speaker of the Massachusetts House of Representatives and husband of Mercy Warren.[1] James Warren was the son of the royal sheriff of Plymouth County. He was graduated from Harvard in 1745 and, at the death of his father, inherited his public office as well as his profitable mercantile business. Entering the revolutionary movement early, he served several years in the Provincial Congress of Massachusetts. One historian describes him as representing "the stern and uncompromising republicanism of that day."[2] He and Gerry and (until their reconciliation) Samuel Adams disliked and distrusted Hancock as dangerously ambitious, while also opposing the conservative faction headed by James Bowdoin and representing the commercial and professional classes. After ratification Warren became a staunch Jeffersonian democrat.

A Republican Federalist stays mainly on the surface of the debate over the Constitution, concerning himself with the irregularity and the illegality (from several points of view) of the proceedings of the Philadelphia convention, the tendency towards consolidation, and the inadequacy of the representation. His argument is saved from petty legalism by his understanding of the connection between legality and political faith and stability. The first four papers deal mainly with the question of the proceedings of the Convention, the last three with the question of representation, with the theme of consolidation running throughout.

In the first letter (4.13.1–7) the writer urges the need for fundamental discussion, suggests a postponement of the Massachusetts Convention until the sense of Virginia can be known, and argues that the Massachusetts legislature never intended to authorize essential alterations in the Articles of Confederation. Continuing this discussion in his second letter (4.13.8–11), he argues that in proposing the Constitution the Convention usurped power. Moreover, the Constitution has as its object a consolidation of the states, which (the author again emphasizes) the Convention had no power to propose and which should not be accepted merely on the reputation of some of

its framers. In the third and fourth essays (4.13.12–19) A Republican Federalist contends that the case would have been less serious if the Convention had not gone on to provide a mode of ratification contrary to that laid down in the Articles of Confederation and in fundamental violation of the Constitution of Massachusetts. He elaborates on the dangers of violating political compacts, concluding that a ratification by Massachusetts would be both illegal and fundamentally destructive of political stability. The new system is both usurpation and tyranny; the Constitution gives up too much power; and the provision for amendment will be nugatory. Given these circumstances, A Republican Federalist suggests in his fifth essay (4.13.20) that the only safe courses are either to adjourn until the sense of Virginia can be known or to return the proceedings to the state legislature to be transmitted to Congress for amendments consistent with the Articles of Confederation.

In the remainder of the fifth and the last two essays, the writer turns to a more particular examination of the Constitution. The extensive powers given to the federal government amount to a giving up of everything to our rulers (V, 4.13.21). The representation of slaves is unfair (V, 4.13.22); and to defend it on the ground that slaves are property only confirms the tendency of the new scheme to produce a property-based aristocracy (V, 4.13.23). The representation is too small, and the danger that it might be further reduced is not sufficiently guarded against (VI, 4.13.25). Precautions regarding elections are provided against the states, where they are not needed, rather than against the federal government, where they are needed (VI, 4.13.26). The provisions for representation are further objected to for the easy access they offer to foreigners and thus to foreign influence in the federal councils (VI, 4.13.26). These remarks are interspersed with reflections on the Federalists and descriptions of the rage of party spirit caused by the Constitution (V, 4.13.21; VI, 4.13.24).

1. Harding, *Contest over Ratification* 129, n. 1; Warren, Massachusetts Historical Society, *Proceedings* 64 (1932): 155. Mercy Otis Warren was the author of an essay over the pseudonym A Columbian Patriot (see 4.28) and of a history of the Revolution, an excerpt from which is printed in volume 6 (6.14).

2. Morse, *The Federalist Party in Massachusetts to the Year 1808* 23. See also G. Philip Bauer, "James Warren," *Dictionary of American Biography* XIX, 478–79.

I

29 December 1787

To the Members of the Convention of Massachusetts.

Honourable Friends, and Fellow Citizens,

You are called on, and will soon convene to conduct a matter of the last importance to your country—the confidence of your constituents in your 4.13.1

abilities and integrity can never be more fully expressed, than by their suffrages on the present occasion—and on your wisdom and firmness is in a great measure suspended, the fate of the United States.

4.13.2 In a free State like this, and under such circumstances, every individual must be anxious at the approach of an event, which will entail happiness or misery, not only on himself, his family, and the community, but also on his and their posterity:—He has therefore a *right* to address you, and your patriotism will prompt you to consider seriously, whatever shall be offered on the subject with reason and candour, and be worthy of your attention.

4.13.3 *Seneca* I think has established this maxim, that in all concerns of life, we should enquire, *first*, what we want, and *secondly*, how we are to attain it?[1]—Apply these to the present case, and the answers are plain: We want a *free, efficient federal* government—and can only attain it, by a *candid, dispassionate*, discussion of the subject. A system of government has been proposed by the federal Convention: Some are for adopting, some for amending, and others for rejecting it: And when it is considered, that a *federal* government must necessarily be more complicated in its nature, than a *simple one*, and that to form the latter, the ingenuity of man has never yet been able to establish fixed principles which will apply in all cases, is it a matter of surprize, that in forming a Federal Constitution, even *sensible, disinterested* men should differ in opinion, and require an investigation of their principles, in order to convince each other, and to correct their mutual errours? Surely not, and the more calm and temperate their discussions are, the greater will be their prospect of success. Some able writers on both sides, have favoured us with their sentiments on the three great questions respecting the adoption, amendment, and rejection of the proposed plan of government, and we are much obliged to them for their diligent researches and ingenious remarks:—Others with little ability and less decency, have continually wounded the feelings of the publick, by railing against every one who has not subscribed their *political* creed; which if good in itself, would be rendered *odious* by the persecuting spirit of such ignorant zealots: But let them be informed, that their *humour* and *petulance* are not criterions for regulating the judgment of the publick; and that every individual has an equal right with themselves, to attend to the greatest of all earthly concerns, *the establishment of good government*.—Even the news-papers of Boston, have been thus disgraced. Boston has been famed for the liberality of its citizens, and for their attachment to liberty: And the reputation of so respectable a community should not be tarnished by illiberal productions.

4.13.4 In investigating the subject of the proposed constitution, let us first inquire, upon what *ground* it stands: Because if it has no *foundation*, the superstructure must *fall*.

The Federal Convention was first proposed by the legislature of Virginia, to whom America is much indebted for having taken the lead on the most important occasions.—She first sounded the alarm respecting the intended

usurpation and tyranny of Great-Britain, and has now proclaimed the necessity of more *power* and *energy* in our federal government: But anxious as that wise State is for the attainment of these great objects, we find her *not precipitate in adopting the new constitution*. She has allowed herself time to consider the subject, and has deferred the meeting of her convention until May next—Several other States are of the same opinion, amongst which are the respectable States of *New-York* and *Maryland*.—Is it not then a matter worthy of your consideration, whether any disadvantage can result, nay, whether the greatest advantages may not accrue from an adjournment of the Convention of Massachusetts, until the sense of Virginia can be known? *Too much light cannot be thrown on the subject, neither can a short delay possibly injure us; but an hasty decision may irretrievably ruin us.*

In consequence of the measures of Virginia respecting the calling a federal Convention, the legislature of this State on the 21st of February last, *Resolved*, "That five Commissioners be appointed by the General Court, who, or any three of whom, are hereby impowered to meet such commissioners as are or may be appointed by the legislatures of the other States in the union, at Philadelphia, on the 2d day of *May* next; and with them to consider the trade and commerce of the United States, and how far an uniform system in their commercial intercourse and regulations may be necessary for their common interest and permanent harmony; and also to consider, how far it may be necessary to alter any of the articles of the present Confederation, so as to render the Constitution of the Federal Government more adequate to the exigencies of the union: And what further powers may be necessary to be vested in Congress for the common welfare and security, and with them to form a report for the purpose—such alterations and additions as may be made, to be however consistent, with *the true republican spirit, and genius of the present articles of Confederation*. Provided that the said Commissioners on the part of this Commonwealth, are hereby particularly instructed, by no means to interfere with the fifth of the articles of the Confederation, which provides *for the annual election of delegates in Congress, with a power reserved to each State, to recal its delegates, or any of them, within the year, and to send others in their stead for the remainder of the year–and which also provides that no person shall be capable of being a delegate for more than three years in any term of six years, or being a delegate, shall be capable of holding any office under the United States, for which he or any other, for his benefit, receives any salary, fees, or emolument of any kind.*" "The report of the said Commissioners from the several legislatures to be laid before the United States in Congress assembled, to the intent, that if they shall judge it proper, they may recommend the said report or any part of it to the legislatures of the several States for their consideration: And if agreed to by them, that the same may become a part of the Confederation of the United States."[2] 4.13.5

This was the resolution of Massachusetts, in consequence of the proposi- 4.13.6

tion of Virginia, but Congress having on the 21st of February, the same day on which this resolution passed, recommended a Federal Convention, our Legislature on the 7th of March last, repealed that, and passed the following resolve—"Whereas Congress did on the 21st day of February 1787, resolve, ['']That in the opinion of Congress, it is expedient that on the second Monday in May next, a Convention of Delegates, who shall have been appointed by the several States, be held at Philadelphia, for the *sole* and *express* purpose of revising the articles of Confederation, and reporting to Congress and the several legislatures such *alterations* and *provisions therein*, as shall when agreed to in Congress and confirmed by the States; render the Federal Constitution adequate to the exigencies of government and the preservation of the union['']—And whereas, the legislature of this Commonwealth did on the 3d day of the present month, elect the Hon. Francis Dana, Elbridge Gerry, Nathaniel Gorham, Rufus King, and Caleb Strong, Esquires, delegates, or any three of them, to attend and represent this Commonwealth at the aforesaid Convention for the *sole* and *express* purpose mentioned in the afore recited resolve of Congress, RESOLVED, That his Excellency the Governour be and he hereby is requested to grant to the said Francis Dana," &c. "a commission agreeably to the said resolution of Congress."[3]

4.13.7 The first of these resolves will shew that when the Legislature in February last, agreed to a Convention, the delegates of the State were to report measures *not* for *abolishing* but for *preserving* the articles of Confederation; for amending them; and for increasing their powers consistently with the true republican spirit and genius thereof—that the report was to have been made to Congress and that so much of it only as should be approved by them, and agreed to by the legislatures of the several States, was to become a part of the Confederation—the last of the resolves will shew, that in March last the legislature altered the powers of their delegates and conformed them to the resolve of Congress—that the utmost extent of this resolve, which united the views of Congress and our legislature, was to call a Convention for the *sole* and *express* purpose of revising the articles of Confederation, and reporting to Congress and the legislatures, such *alterations* and *provisions* therein as shall render the Federal Constitution adequate to the exigencies of government, and the preservation of the union—that neither Congress nor the Legislature had the most distant idea of conducting the matter in a mode different from that presented by the Confederation, which provides "that the articles of Confederation shall be inviolably observed by every State, and the union shall be perpetual, nor shall any *alteration* at any time hereafter be made *in any of them*, unless *such alterations be agreed to in a Congress of the United States, and be afterwards confirmed by the legislature of every state*." That on the other hand, Congress in their resolve, and the legislature in both their resolves before recited, expressly provided, and they would have acted *unconstitutionally* to have done otherwise, that the *alterations* and *provisions* in the articles of Confederation, to have been reported by the Federal Convention, should be agreed to

in Congress, and be confirmed by the legislative of the several States before they become part of the Federal Constitution.

A Republican Federalist

II

2 January 1788

To the Members of the Convention of Massachusetts.

Honourable Friends, and Fellow Citizens,

4.13.8 It clearly appeared by the resolutions quoted in my last address, that the utmost extent of the views of Congress, and of the Legislature of this State in calling a Federal Convention, was, that it should revise the articles of Confederation, and report such *alterations* and *provisions therein*, as shall render the Federal Constitution adequate to the exigencies of government and preservation of the union—that neither Congress or the Legislature had the most distant idea of conducting the matter in a mode different from that prescribed by the Confederation—but that on the other hand, they expressly provided, and would have acted unconstitutionally to have done otherwise, that the proceedings of the Convention, before they become a part of the Federal Constitution, should be agreed to by Congress and confirmed by the Legislatures of the several states.

4.13.9 No one I presume will deny that the powers of the delegates of this state, were as *full* and *extensive* as either Congress or any of the Legislatures had *authority* to give—that the powers of the other delegate[s] were in general, more *limited*—and that had any of them been more *ample* than those of Massachusetts, they must have been founded in *usurpation* and therefore have been *null* and *void*. And have the Federal Convention, in pursuance of their powers, reported the *alterations* and *provisions* mentioned in the recited resolve of Congress? If they have, let us call on Congress, to inform us, whether they have agreed to the report, and to transmit it when approved, to the Legislature for their consideration: This would be conducting upon constitutional principles, but the *call* would be vain, there is no such report, *and the original design of forming the Convention has not been carried into effect.*

4.13.10 The Convention nevertheless have reported a new system, and the object of it is, *a consolidation of the union*. Mr. Wilson denies this fact, and says "if this was a *just objection*, it would be *strongly against the system:*"[4] But unfortunately for that gentleman, his *memory* appears to be very *defective*, for he forgot that he has said, in the letter to Congress, signed "George Washington, president, *by unanimous order of the Convention*"—"In all our deliberations on this subject, we kept steadily in our view, that which

appears to us the greatest interest of every true American, *the consolidation of the union.*"[5] There the Convention have candidly avowed their intentions, and how Mr. Wilson can reconcile his *jarring* and *contradictory* assertions, I am at a loss to determine. The Convention then having kept "*steadily in view*" "a consolidation of the union," it is incumbent on every one who is zealous for the *infallibility* of the Convention, and liberal in abusing those who *dare* to think for themselves, to admit that the proposed plan *compleatly embraces* the object of *consolidation,* for otherwise he will call in question the *ability* of the Convention to execute their design—indeed it must be evident to every one who will attentively read the new system, that it secures to all intents and purposes the *consolidation intended.* And here permit me to remark on an argument, in favour of the new plan, often urged and drawn from the respectable characters of General Washington and Doctor Franklin: Let those gentlemen have *every honour* that can be paid them, they are justly entitled to *it*—but of what consequence is it to the publick, whether the members who assented or dissented to the new plan, were influenced by *virtuous* and *disinterested,* or by *vicious* and *selfish* motives? If the plan is *properly* before the States, is *good,* and will secure to them "peace, liberty and safety" should it not be adopted, were they even sure that every member who subscribed it was in principle a *Caligula* or a *Nero?* And if the plan is bad and will entail *slavery on the land,* ought it not to be rejected should every subscriber excel in wisdom and integrity *Lycurgus* or *Solon.* Surely the *good* or *bad* effects of the system, depend not on the *characters* of the original *framers,* but on the *system* itself, and on those who may administer it; and no man of candour and discernment will urge *characters,* as an argument for or against this system, however respectable the characters of any particular members, or of the members in general of the federal convention, may be: They had no other authority to act in this matter, than what was derived from their *commissions*—when they ceased to act *in conformity thereto,* they ceased to be a federal convention, and had no more *right* to propose to the United States the new form of government, than an equal number of other gentlemen, who might voluntarily have assembled for this purpose.[6]—The members of the convention therefore, admitting they have the merit of a work of supererogation, have thereby inferred no kind of obligation on the States to *consider,* much less to adopt *this plan of consolidation.* The consolidation of the union! What a question is this, to be *taken up* and *decided* by *thirty nine gentlemen,* who had no publick authority whatever for *discussing it!*—To be submitted to the people at large, before it has been *considered* or even *agitated* by Congress, or any of the Legislatures, and to be transmitted with such precipitation to the States *merely* "for their assent and ratification?" True it is, that neither Congress or the Legislatures could decide this great question; the first are restrained by the confederation, and the last by the federal and state constitutions—but Congress and the Legislatures, if they thought it neces-

sary, might at any time have considered the subject, expressed their sentiments on it, and recommended to the people an election of State conventions to have taken up the matter. Had this been done the important question would have been previously canvassed; and understood by Congress and the Legislatures; and explained to the people; and the publick opinion would have been thus *united* in some salutary measure—but as the matter has been conducted, a *system of consolidation* has been formed with the most *profound secrecy*, and without the *least authority:* And has been *suddenly* and *without any previous notice* transmitted by the federal convention for ratification—*Congress not disposed to give any opinion on the plan, have transmitted it to the legislatures*—The *legislatures have followed the example, and sent it to the people. The people* of this State, *unassisted* by *Congress* or their *legislature*, have not had time to investigate the subject, have referred to the news-papers for information, have been divided by contending writers, and *under such circumstances* have elected members for the *State Convention*—and these members are to consider whether they will accept the plan of the federal convention, *with* ALL *its imperfections*, and *bind* the people by a *system of government*, of the nature and principles of which they have not at present a clearer idea, than they have *of the Copernican system.*

What are we to expect, from such a mode of proceeding? Are not the 4.13.11
people already thrown into great confusion? Are not heats, animosities, and a party spirit very prevalent and daily increasing? Are the citizens of this State in a proper temper to receive information, either of the ratification, or rejection, of the new Constitution? Is there a probability of *its being supported*, if so *precipitately adopted?* Surely it must appear that the plan, although *improperly before the State*, cannot with safety be rejected—that it cannot as it stands, be safely *accepted*—that the people will not be satisfied with a *ratification*, and the *delusive prospect of future alterations*—and that the only hope that remains of preserving the peace and happiness of this Commonwealth, is *from amending the plan in order to its adoption.*

The Republican Federalist

III

9 January 1788

To the Members of the Convention of Massachusetts.

Honourable Friends, and Fellow Citizens,

In the preceding numbers it has been shewn, that the original design of 4.13.12
calling the federal convention has not been carried into effect—That they

nevertheless reported a system of government with a professed intention of consolidating the union—That they had not the least publick authority to discuss, much less to decide this great question—That neither Congress or the Legislatures have been disposed to express any opinion on the new system—That although they were constitutionally restrained from deciding, yet they had a right at any time, to have agitated and considered the question, to have explained it to the people, and to have recommended their electing State Conventions to have taken up the matter—That had this been done, the people would have had every necessary information, and probably have united in some salutary measure—That they are now without that information, and by the mode of conducting this matter, are thrown into great confusion—That a party spirit prevails, and is daily increasing—That in the present temper of the people, it will not restore peace or tranquility to reject the system, or to ratify it with or without the *delusive prospect* of future alterations—That if accepted in its present form, there is not a probability of supporting it—and that amendments are indispensibly necessary, in order to its adoption.—These are facts which if any one doubts, will I think, clearly appear when we consider the system itself.

4.13.13 The revolution which separated the United States from Great-Britain, was not more important to the liberties of America, than that which will result from the adoption of the new system. The *former* freed us from a *foreign subjugation*, and there is too much reason to apprehend, that the *latter* will reduce us to a *federal domination*. Had the Convention thought proper, *merely* to have formed the plan, and to have sent it to Congress, and the legislatures, the consequences would not have been so serious, as from their accompanying it with the following resolutions.[7]—"*Resolved*, That the preceeding Constitution be laid before the United States in Congress assembled, and that it is the opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates chosen in each state by the PEOPLE thereof, under the recommendation of its legislature, *for their assent and ratification*, and that each Convention, assenting to and ratifying the same, should give notice thereof to the United States in Congress assembled." "*Resolved*, That it is the opinion of the Convention, that as soon as the Conventions of *nine* States shall have ratified the Constitution, the United States in Congress assembled shall fix a day on which electors should be appointed by the States which shall have ratified the same, and a day on which the electors should assemble to vote for the President, and the time and place for commencing proceedings under this Constitution: That after such publication, the electors should be appointed, and the Senators and Representatives elected: That the electors should meet on the day fixed for the election of the President; and should transmit *their votes*, certified, signed, sealed and directed, as the Constitution requires, to the secretary of the United States in Congress assembled, that the Senators and Representatives should convene at the time and place assigned—That the Senators

should appoint a President of the Senate, for the sole purpose of receiving, opening and counting the votes for President, and that after he shall be chosen, the Congress together with the President, should without delay, *proceed to execute this Constitution.*" In consequence of these resolutions of the federal convention, Congress "*Resolved,* That the Constitution so reported be transmitted to the several legislatures, in order to be submitted to a Convention of Delegates, chosen in each State by the people thereof, *in conformity to the resolves of the said Convention in that case made and provided*"[8]—and in pursuance thereof, the legislature of this State resolved, "That it be, and it is hereby recommended to the people of this Commonwealth, that a Convention of Delegates be chosen *agreeably to and for the purposes mentioned in the resolution of Congress aforesaid.*["]—It is evident, therefore, that the proposed Constitution is, agreeably to the recommendation of the federal Convention, submitted to the State Convention, *that is,* to a *majority* of its members, for their assent and ratification. Should the plan be adopted by this and eight other States, *every part of the Constitution of this Commonwealth which is contrary to the new Constitution, to the laws that may be made in pursuance thereof, or to treaties of the United States,* will be null and void: for the plan expressly provides, that "this Constitution, and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, *any thing in the Constitution or laws of any state to the contrary notwithstanding*"—And will not such a subjection of the Constitution of this Commonwealth, not only *to the Constitution,* but *to the laws of the union,* and to *treaties,* that are or may be made under the *authority of Congress,* be in effect, a DISSOLUTION OF THE GOVERNMENT OF MASSACHUSETTS? Surely it will. Mr. *Locke,* in his treatise of civil government,[9] *chap.* 19, in *sect.* 212, says, "Governments are dissolved from within, when the legislative is altered," and in *sect.* 215, "*for it is not a certain number of men, no, nor their meeting,* unless they have also freedom of debating, and leisure of perfecting, what is for the good of the society, wherein the legislative consists: when these are taken away, or altered, so as to deprive the society of the due exercise of this power, the *legislative* is *truly altered;* for it is *not names that constitute governments, but the use and exercise of those powers that were intended to accompany them.*" What were *the powers* originally intended by the people of this State, *to be used and exercised by their legislature;* they are contained in the Constitution of the Commonwealth, *part* 2, *chap.* 1, *sect.* 1, under the head of "the legislative power," qualified nevertheless by certain reservations in the Bill of Rights. *Some* of the most *important* of those *powers* will, by the new plan, be transferred to the *federal government,* and *others* be exercised by *their* permission. This, I presume, is too evident to be denied, and will hereafter more fully appear. Our government will then have the *name* that it

now *has*, but not "the use and exercise of those powers that were intended to accompany it." Indeed, it is inconceivable, that a plan of consolidation can be established, without destroying the sovereignty of the respective States, and thus *dissolving their present governments*.

4.13.14 But supposing the adoption of the new plan would only *alter* the Constitution of this State, *by what mode should that alteration be made?* Should it be effected pursuant to the recommendation of a federal Convention, and in direct violation of the Constitution of this State? or should the alteration be made consistently with the Constitution itself? This expressly provides, "That, in order the more effectually to adhere to the principles of the Constitution, and to correct those violations which by any means may be made therein, as well as to form such alterations as from experience shall be found necessary, the General Court, which shall be in the year of our Lord 1795, shall issue precepts to the selectmen of the several towns, and to the assessors of the unincorporated plantations, directing them to convene the qualified voters of their respective towns and plantations for the purpose of collecting their sentiments on the *necessity* or *expediency* of *revising the Constitution*, in *order to amendments:* And if it shall appear by the returns made, that two thirds of the qualified voters throughout the State, who shall assemble and vote in consequence of the said precepts, are in favour of such revision or amendment, the General Court shall issue precepts, or direct them to be issued, from the secretary's office to the several towns to elect delegates to meet in Convention, for the purpose aforesaid: The said delegates to be chosen in the same manner and proportion as their representatives," &c.[10]—Here we see, that by the Constitution of this State in the year 1795, the sentiments of the qualified voters on the *necessity* or *expediency* of revising the Constitution, are to be collected, and if it shall then appear that *two thirds* of them are in favour of a *revision* and *amendment*, in that case only, is a Convention to be called *for these purposes*. Should it be a question, whether an alteration in the Constitution can be made before the year 1795, there is nothing in the clause recited, that I can conceive to prevent it: because although in the year 1795, precepts must issue for the purposes mentioned, there is no provision to prevent their issuing, if necessary, before that period. But surely, if any alteration should be made in the Constitution, it must be *in a mode provided by the Constitution itself*, for otherwise *the clause recited must become a nullity*, which is inadmissible, or, which is the same thing, *the Constitution itself must be violated*.

4.13.15 Of all compacts, a Constitution or frame of Government, is the most solemn and important, and should be strictly adhered to. The object of it is the preservation of that property, which every individual of the community has, in his *life, liberty* and *estate:* Every measure therefore, that only approaches to an infraction of such a covenant, ought to be avoided, because it will injure that sacred regard to the Constitution which should be deeply impressed on the minds of the whole community—How much more careful

then should we be to avoid an open violation of such a compact? Such a violation must take place, if a majority, or every member of the Convention, should vote for an acceptance of the new Constitution, because a Convention cannot be called for *altering*, much less *dissolving* the government of Massachusetts, before the sentiments of the qualified voters are collected on the *necessity* or *expediency* of *revising* the Constitution in order to *amendment*, and *two thirds* of them shall be in favour of the measure. A ratification, therefore, of the new Constitution by the State Convention, cannot be binding on the citizens of this State, being directly repugnant to an existing covenant. But suppose such a ratification should be supported by a majority of the Convention and of the citizens of this State: What must be the consequence of thus destroying all publick faith and confidence? Are not these the principles that bind and cement the community, and that establish them as a body politick? Are they not the foundation of a free Government? If every individual by such a measure, should have his faith and confidence in the honour and integrity of the community effectually destroyed, (and this must inevitably be the consequence) will he not decline entering into such a nugatory compact in future, or entering into it, will he not disregard it as a mere matter of form, and rather than be at any pains or expense to support it, suffer it to share the fate of the other? Certainly he will, and instead of a government founded in compact, we must hereafter be content with one founded in fraud or force.[11]

Republican Federalist

IV

12 January 1788

To the Members of the Convention of Massachusetts.

Honourable Friends, and Fellow Citizens,

Every candid mind will by this time I think be clearly convinced, that if 4.13.16
the constitution of this Commonwealth *has any validity*, the ratification of a plan that would *alter*, much less of one that would *dissolve the government*, cannot be valid, unless by a mode provided by the Constitution itself. There are but two modes, to my knowledge, wherein any alterations can be made: One has been mentioned, and it has been fully shewn that the ratification of the new Constitution by the state Convention would be in direct violation of that mode, and therefore not binding on the citizens of this State.—Let us now consider the other mode. In addition to the political compact contained in the Constitution of this State, it is bound by another as *solemn* and more *extensive, the articles of Confederation*. By the *first*, the "whole people

covenants with each citizen, and each citizen with the whole people:" and by the last ["]*the whole of the States covenants with each State, and each State with the whole of the States,*" and the powers in the articles of Confederation, expressly delegated to the United States in Congress assembled, are *paramount* to and *annul* every power of the State Constitution, that is inconsistent with and opposed to them. A mode is provided in the Confederation for amending it, in the words following, "and the articles of this Confederation shall be inviolably observed by every State of the union, shall be perpetual, *nor shall any alteration at any time hereafter be made in any of them unless such alterations be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State.*"[12] A correspondent provision is made in the fourth article of the Bill of Rights of our State Constitution—(*vide Constitution of Massachusetts*)[13] the exercise then of every power, jurisdiction and right, which is or may hereafter be *by the people* thus expressly delegated, is clearly relinquished on *their* part and will be binding on *them*. Had the federal Convention reported and Congress agreed to alterations in the articles of Confederation, there could I think have been no doubt, that the ratification of such alterations *by the legislatures* would have been as binding *on the people* as if made by *themselves*, because in the article mentioned of the bill of rights *the people* have recognized the articles of Confederation, which on the part of the State were ratified, pursuant to *their* authority: And have *expressly provided* by those articles, that alterations therein which shall *be agreed to by Congress*, and *confirmed by the legislatures*, shall become part thereof: The legislature nevertheless of this State, would probably have applied to the people for their sense on such alterations, before a confirmation thereof, but no one will pretend to say that the federal Convention have reported alterations, or if they had, that Congress have agreed to, or the legislature confirmed them. The federal Convention, have, as has been shewn, reported a system, which destroys the articles of Confederation, and completely embraces the consolidation of the union: They have also recommended, that this new system should be administered, when ratified by nine States, and it must clearly appear, that the ratification of it by the Convention of this State, would not only be *a violation of the State Constitution, but also of the articles of Confederation—would thus be a double act of political perfidy—and would not be binding on any State, not even on those which may thus ratify it.* Such a measure, therefore, would not only *tear up by the roots*, and *annihilate* all confidence in the most sacred and solemn covenants between the *whole people* and *each citizen of this State*, but also between the *whole of the States* and *each State*, and the new Constitution would not stand on the ground of *right, good faith*, or *publick confidence*. Notwithstanding then the good intentions of the federal Convention, it is an unfortunate circumstance that they did not strictly adhere to their powers, because the mode proposed for ratification, as well as the system itself, must produce great convulsions.

Sir William Temple, in treating "of popular discontents," says, "The first safety of Princes and *States* lies in avoiding all councils or designs of *innovation* in *ancient and established forms, and laws, especially those concerning liberty, property and religion* (which are the possessions men will ever have most at heart) and thereby leaving the *channel* of *honour and common justice* clear and undisturbed."[14] The new system was not only *unauthorized*, but altogether *unexpected* by Congress, the legislature, and the people, is not merely an *innovation*, but an *interchange* [entire change?] of the "established form" of government; and will produce as great a change in the laws concerning liberty and property—does not only *disturb*, and some instances *alter* but in others *destroys* the channels of *honour* and *common* justice—and so far is the mode of adoption from being constitutional, as that it violates the Constitutions of the States and of the union, and establishes a precedent, not only for annihilating the new Constitution itself, but for building on its ruins a *compleat system of despotism*—for what will the people have to secure them against an introduction of the most arbitrary government after the *banishment of good faith* from the United States of America? Is it not incumbent then on the State Convention, to consider *seriously* and *thoroughly*, in what a situation they will place this Commonwealth and the union, by the proposed ratification? This State, before it shall have declared in favour of the new system as it stands, may have great influence in promoting an accommodation of this matter, between contending States, and the contending citizens of each State, and having the confidence of all parties, may as a wise mediatrix, promote their common interest: But when the State shall have manifested such a total disregard to the obligations of the most solemn political compacts, as to ratify in the mode proposed, the new Constitution, then will end the confidence of the union, and of our own citizens in the decision of Massachusetts, and she will embark in a precarious bottom, with the gloomy prospect of an approaching tempest, and unnecessarily expose herself to a political shipwreck.—If then, the new Constitution, ratified in its present form and in the mode proposed, will not stand on the ground of *right, good faith,* or *publick confidence,* on what ground will it stand? Mr. Lock[e], in his treatise mentioned,[15] chap. 17, sect. 197, says, "as conquest may be called a foreign usurpation, so usurpation is a kind of domestick conquest, with this difference, that an usurper can never have a right on his side, it being no *usurpation* but when one has got into the possession of what another has a right to." The right of originating a system for consolidating the union, belonged only to the people, but the federal Convention have taken possession of it, when called for a different purpose, and can any one say their proceedings are not founded in usurpation? The same author goes on, "this, so far as it is usurpation, is a change only of persons, but not of the *forms* and *rules* of the government: For if the usurper extend his power beyond what of right belonged to the lawful prince, or governour of the

Commonwealth, it is *tyranny* added to *usurpation*." Had the federal Convention then only exercised the powers of the people in originating a system of consolidation, it would have been nothing more than usurpation; but having changed the *forms* and *rules* of delegating powers to the federal government, the Convention have done what the governours or rulers of the Commonwealth had no right to do, and by promoting State Conventions to violate the most solemn compacts, have also done what the people themselves had no right to do, and as the principles and reasonings of the above celebrated writer apply more forcibly to the *alteration* or *formation*, than to the *administration* of government, are not the proceedings of the Convention, founded not only in *usurpation*, but also in *tyranny?*

4.13.17 To what purpose then is it, to raise this mighty superstructure, which having no foundation, must soon fall and involve those in it in inevitable ruin—the federal Convention were undoubtedly urged to these measures by conceiving, that their system, if well adapted to the welfare of the people, would nevertheless meet with opposition from some of the States, and be thus defeated: But did not an honest zeal lead the Convention, as it has often led others to a *remedy*[16] *worse than the disease?* Should not a proper system have been sent in a constitutional mode to the States, with a presumption that every State would do what was for the good of the whole; and if any of them had withheld their assent from a measure requisite for the general welfare, and thus rendered a *separation* necessary; should *it* not have been preceeded by a declaration, stating the reasons and necessity of such a *separation?* Surely such a *dismemberment* will require as much solemnity as *that* which separated us from Great-Britain, and may produce as important consequences.

4.13.18 Many great objections to the new system have been unanswered, and I conceive, if we mean to support our liberties, are unanswerable: Notwithstanding which the State Convention will in all probability be warmly urged to accept the system, and at the same time to propose amendments—this indeed may take in the *weak* and *unwary*, but not persons of discernment: For a wise people will never place over themselves an arbitrary government, in expectation that it will be so *remarkably* virtuous as to divest itself of unreasonable and unlimitted powers. Is not this contrary to human nature, which is generally grasping at more power, not knowing often times that it would be abused as soon as obtained?

4.13.19 The new Constitution provides "that the Congress whenever two thirds of both houses shall deem it necessary shall propose amendments to this Constitution, or on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress:"—To call a Convention then,

two thirds of both houses of the new Congress must deem it necessary, or the legislatures of two thirds of the several States must make an application to Congress; and can it be doubted that there will not be found such a majority of the new Congress, or of the State legislatures *disposed* to call a Convention *for making amendments?* When the Constitution is adopted, will not the friends of it strenuously contend to give it a trial? Are there not numbers who at this time openly reprobate republican governments? And will not such persons raise numberless objections to the appointment of such a Convention, and endeavour to prevent it? But supposing a Convention, should be called, what are we to expect from it, after having ratified the proceedings of the late federal Convention? They will be called to make "*amendments*," an indefinite *term*, that may be made to signify any thing. Should judge M'Kean, be of the new Convention, perhaps he will think a system of despotism, *an amendment* to the present plan,[17] and should the next change be only to a monarchial government, the people may think themselves very happy, for *bad* as the new system is, it is the *best* they will ever have should they now adopt it. If therefore, it is the intention of the Convention of this State to preserve republican principles in the federal government, they must accomplish it *before*, for they never can expect to effect it *after* a ratification of the new system.

V

19 January 1788

To the Members of the Convention of Massachusetts.

Honourable Friends, and Fellow Citizens,

The proceedings of the federal Convention, having, as has been shewn, originated in usurpation, and being founded in tyranny, cannot be ratified by the State Convention, *without breaking down the barriers of liberty; trampling on the authority of federal and State Constitutions, and annihilating in America, governments founded in compact.* In this predicament, there appears but two measures which can with safety be adopted by the Convention of this State. One has been hinted at, *an adjournment,* until the sense of Virginia can be known. The great danger in this business is, from *precipitation, not* from *delay:* The *latter* cannot injure whilst the *former* may *irretrievably* ruin us; an adjournment would not only ripen the judgment of our own citizens, but give them an opportunity of benefiting by the opinions of those States, which are attentive to, but not *extravagantly* zealous in this matter. The other measure is, to return the proceedings of the federal Convention to the legislature of this State, to be by them transmitted to Con- 4.13.20

gress, and *amended* agreeably to the articles of Confederation: For the system being *improperly* before the State Convention, and they being *incompetent* to a ratification of it, cannot thereby bind the citizens of Massachusetts. Had the system been in itself unobjectionable, it is evident from what has been said, that the sentiments of the qualified voters *on the necessity* of revision, *must* have been taken, and two thirds of them *must* have been in favour of it, before a State Convention could be called for amending the Constitution much more for dissolving the government.

4.13.21 Let us once more particularly attend to the system itself. It begins, "We the People of the United States, in order to form a more perfect union," &c. "do ordain and establish this Constitution for the United States of America"—In other words, *We the people, do hereby publickly declare the violation of the faith which we have solemnly pledged to each other—do give the most unequivocal evidence, that we cannot ourselves, neither can any others, place the least confidence in our most solemn covenants, do effectually put an end in America, to governments founded in compact—do relinquish that security for life, liberty and property, which we had in the Constitutions of these States, and of the Union—do give up governments which we well understood, for a new system which we have no idea of—and we do, by this act of ratification and political suicide, destroy the new system itself, and prepare the way for a despotism, if agreeable to our rulers.* All this we do, for the *honour of having a system of consolidation formed by us the people.* This is not *magnifying,* for such are the facts, and such will be the consequences. Indeed we find *despotism* not only in contemplation of the Pennsylvanians, but openly avowed in their State Convention, in the words following—"DESPOTISM, if wisely administered, is the best system invented by the ingenuity of man." This was declared by chief justice M'Kean;[18] and in such an high office, we must suppose him a man of too much precaution to have made the declaration, had he not known, that a majority of the Convention, and of the citizens, who so highly applauded his speeches, were of his opinion. M. Montesquieu, in his "Spirit of Laws," 1st vol. book 3, chap. 9, says, "As *virtue* is necessary in a *republick,* and *honour* in a *monarchy,* so *fear* is necessary in a *despotick* government: With regard to *virtue,* there is no occasion for it, and *honour* would be extremely dangerous." Thus has a declaration been made in Pennsylvania, in favour of a government which substitutes *fear* for *virtue,* and reduces men *from rational beings* to the *level of brutes;* and if the citizens of Massachusetts are disposed to follow the example, and *submit their necks to the yoke,* they must expect to be governed by the *whip* and *goad.* But it is remarkable, that the resolution of the federal Convention, for transmitting the system to the people, provided, "that the Constitution should *be laid before the United States in Congress assembled,* and afterwards submitted to a Convention of Delegates, chosen in each State by the people thereof, *under the recommendation of its legislature;* thus making Congress and the legislatures,

vehicles of conveyance, but precluding them from passing their judgments on the system. Had it been submitted to their consideration, their members were men of such discernment, that the *defects* as well as *excellencies* of the plan, would have been clearly explained to the people; but immediately on the publication of it, we find measures were taken to prejudice the people against all persons in the legislative, executive and judicial departments of the States and Confederacy (if opposed to the plan) as being actuated by motives of private interest. Mr. Wilson, a member of the federal and Pennsylvanian Convention, in his town meeting speech, adopted this practice, which, to say the least of it, was very *illiberal.*[19] Indeed, it is but justice to observe, that many artful advocates of this plan, to cover their designs of creating a government which will afford *abundance* of *legislative offices for placemen and pensioners, proclaimed suspicions* of others, and diverted the attention of the people from themselves, on whom the odium should fall.

Let us now proceed to the provision in the system for a representation of the people, which is the *corner stone* of a free government. The Constitution provides, art. 1st, sect. 2, "that representatives and direct taxes shall be apportioned among the several States, which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons." Representatives then are to be "apportioned among the several States, according to their respective numbers," and *five* slaves, in computing those numbers, are to be classed with *three* freemen—By which rule, fifty thousand slaves, having neither *liberty* or *property,* will have a representative in that branch of the legislature—to which more especially will be committed, the *protection of the liberties,* and *disposal of all the property* of the freemen of the Union—for thus stands the new Constitution. Should it be said, that not *the slaves* but their *masters* are to send a representative, the answer is plain—If the *slaves* have a *right* to be represented, they are *on a footing* with *freemen, three* of *whom* can then have no more than an equal right of representation with *three slaves,* and these when qualified by property, may elect or be elected representatives, *which is not the case:* But if they have not a right to be represented, their masters can have no right derived from their *slaves,* for *these* cannot transfer to others what they have not themselves. Mr. Locke, in treating of political or civil societies,[20] chap. 7, sect. 85, says, that men "being in the state of slavery, not capable of any property, cannot, in that state, be considered as any part of civil society, the chief end whereof, is the preservation of property." If slaves, then, are no part of civil society, there can be no more reason in admitting them, than there would be in admitting the *beasts* of the field, or *trees* of the forest, to be classed with *free electors.* What covenant are the freemen of Massachusetts about to ratify? A covenant that will degrade them to the *level of slaves,* and give to the States who have as many blacks

4.13.22

as whites, *eight* representatives, *for the same number of freemen* as will enable this State to elect *five*—Is this an *equal*, a *safe*, or a *righteous* plan of government? Indeed it is not. But if to encrease these objections, it should be urged, "that representation being regulated by the same rule as taxation, and taxation being regulated by a rule intended to ascertain the relative property of the States, representation will then be regulated by the principle of property."[21] This *answer* would be the only one that could be made, for representation, according to the new Constitution is to be regulated, either by *numbers* or *property*.

4.13.23 Let us now inquire of those who take this ground, what right they have to put a construction on the constitution, which is repugnant to the express terms of the Constitution itself? This provides, "that representatives shall be apportioned among the several States, *according to their respective numbers*." Not a word of *property* is mentioned, but the word "numbers" is repeatedly expressed—Admitting however that property was intended by the Constitution as the rule of representation, does this *mend the matter?* it will be but a short time, after the adoption of the new Constitution, before the State *legislatures*, and *establishments in general* will be so *burthensome* and *useless* as to make the people desirous of being rid of them, for they will not be able to support them. The *State appointment* of Representatives will then cease, but *the principle of representation according to property*, will undoubtedly be retained, and before *it is established* it is necessary to consider whether it is a just *one*, for if *once* it is *adopted* it will *not be easily altered*.—According to this principle, a man worth £50,000, is to have as many votes for representatives in the new Congress, as *one thousand men*, worth £50 each: And *sixty such nabobs* may send *two* representatives, while *sixty thousand* freemen having £50 *each* can only send the same number. Does not this establish in the representative branch of the new Congress, a principle of aristocracy, with a vengeance? The Constitution[s] of the several States, admit of no such principle, neither can any freeman with safety thus surrender, not only the intire disposition of their property, but also, the controul of their liberties and lives to a few opulent citizens. Should it be said that the rule of federal taxation, being advantageous to the State, it should be content with the same rule for representation. The answer is plain, the rule gives no advantage, but is supposed to be advantageous to Massachusetts, and to be an accommodation very beneficial to the southern States: But admiting this State will be benefited by the rule, is it disposed to sell its birthright, the right of an equal representation in the federal councils *for so small a consideration?* Would this State give up that right to any State that would pay our whole proportion of *direct* and *indirect taxes?* Shall we relinquish some of the most essential rights of government, which are our only security for every thing dear to us, to avoid our proportion of the publick expense? shall we give up all we have, for a small part of it? This if agreed to, would be no great evidence of our wisdom or foresight. But it is

not probable, in the opinion of some of the ablest advocates for the new system, that *direct taxes* will ever be levied on the States, and if not, the provision for levying such taxes will be *nugatory:* We shall receive no kind of benefit from it, and shall have committed ourselves to the mercy of the states having slaves, *without any consideration whatever.* Indeed, should direct taxes be necessary, shall we not by increasing the representation of those States, put it in their power to prevent the levying such taxes, and thus defeat our own purposes? Certainly we shall, and having given up a substantial and *essential* right, shall in lieu of it, have a mere *visionary advantage.* Upon the whole then, it must be evident, that we might as well have committed ourselves to the parliament of Great-Britain, under the idea of a *virtual representation* as in this manner resign ourselves to the federal government.

VI

30 January 1788

To the Members of the Convention of Massachusetts.

Honourable Friends, and Fellow Citizens,

Whoever has attended the debates of the Convention, must already be convinced, that the magnitude of the object, and the anxiety of the members, whether for or against the system as it stands, has produced a party spirit which augurs no good:[22] It has now become a struggle for conquest; rather than for conviction: And great as the characters are which compose the Convention, their talents are more employed to make proselytes in favour or against than to investigate precisely and explain clearly the merits and demerits of the proposed Constitution. It must likewise appear, that so many able and eloquent speakers as there are in favour of it, from the supreme executive, judicial and legislative departments, as well as from the bar, desk, medical and military professions, that there is not a prospect of doing justice to the objections against the plan. Should it, therefore, in this state of affairs, be carried by a small majority, what must be the consequences? They are too apparent, and too ruinous to contemplate, and every one is left to form his idea of them. The same would probably be the effect of a negative, and the farther we proceed in this business, the more evident is it, that an adjournment until the sense of Virginia and other States can be known, is not only proper, but indispensibly necessary for the peace and welfare of this State.—To persuade the people that this system will produce advantages which will never flow from it, or to conceal from them the *burthen* and *coercion* that will result from it, will be impolitick in the extreme, for the deception must appear as soon as the plan is administered, 4.13.24

and the new administration itself will be overwhelmed, and all federal government be prostrated by an enraged and disappointed people. I am sensible that many worthy men are for adopting this plan, not because they approve of it, but from an idea that we shall never obtain another; but what reason is there for this apprehension? The whole Continent are desirous of an efficient federal government—The first constitution proposed to the people of Massachusetts was rejected by them; it originated improperly as this did, and if it had not, it was not a good one. The people therefore made a second attempt, and succeeded in it; and is there not the same reason to hope for success in the present case? Or if we fail, that the attempt will probably make us unanimous in adopting this system? But is it not extraordinary, that a Constitution should be proposed by gentlemen, who had no authority whatever to form it—that they should dissolve themselves without knowing the objections of the people, and that the latter should now be told, they must take this or have none?—This may be language adapted to slaves, but not to freemen.

4.13.25 By my last, I think it must fully appear, that the apportionment of representatives by the new system, is to be either according to numbers or property—If according to numbers, that we are to commit ourselves by an unequal representation to the States who are peopled in a great measure with slaves, and if according to property that we are to adopt in our representative branch the most extraordinary principle for establishing an aristocracy, that ever was imposed on a free people. The Constitution further provides, that "the actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct." The whole number of freemen and slaves at this time, according to the best information, is about two millions seven hundred thousand, of which six hundred thousand at least are slaves—two millions one hundred thousand freemen then, and three hundred and sixty thousand, being three fifths of the slaves, will make the present enumeration two millions four hundred and sixty thousand. If we suppose (what considering the continual emigrations from the old to the new States cannot be admitted) that in every twenty years we shall double our numbers, at the end of three years the enumeration will be two millions eight hundred and twenty-nine thousand, and what is to be done with this enumeration? The Constitution in the next paragraph provides, that "the number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative, and until such enumeration shall be made, New-Hampshire shall be intitled to choose three, Massachusetts eight," &c. &c. The people then are called upon to ratify a Constitution, which provides that they shall never have above one representative for thirty thousand inhabitants, without providing that they shall have one for that number: This clause, whilst it restrains the new government from allowing more than one representative to the number

mentioned, authorizes it by making the rule of apportionment one or two hundred thousand inhabitants for each representative, to reduce their number to twenty-eight or even to fourteen. This is so clear, that the warmest advocate for the new system will risque his reputation for candour by denying it. If there was no discretionary power intended to be lodged in the new Congress, to reduce the number of representatives lower than one for every thirty thousand inhabitants, it would have been provided, that "the number of representatives" shall be at least one for every thirty thousand; and not as it now stands, "that it shall not exceed one" for that number. It may be said, perhaps, that the increase of the inhabitants will be such hereafter as that it will be necessary for Congress to have the power to make the rule of apportionment higher than thirty thousand; but why then was it not provided, that the people should be allowed one representative for every thirty thousand, until the representatives amounted to a certain number? Even two hundred representatives for a legislature, invested as this is to be, with almost unlimited powers, over the lives, liberties and property of the citizens of these States, is not too much at this early period:—Why should we then, having but sixty-five representatives, intrust Congress with a power to reduce this to a much less number? Perhaps it will be said, there is only a possibility of this evil; but in the progress of these papers I think it will appear there is a probability if not a certainty, that when Congress shall have established their *revenue-acts* and *standing army*, which will be accomplished in a few years, they will reduce the number of representatives so low, and regulate their elections in such a manner, as effectually to destroy the representation of the people.[23] Some indeed may say, that if it was greater than at present, it would be expensive and burthensome; but this is too trifling an objection to deserve refutation; for the people of the country know well, that their greatest security against a tyrannical government consists in a *full* and *free* representation—*full* as to number of representatives—*free* as to the right of election, and they are not thus to be bubbled out of their liberties. Should it be admitted, that at the end of three years there will be a representative for every thirty thousand inhabitants, the whole number in the federal legislature will then be ninety-four, and this State's proportion thirteen, and after that time no alteration will be made until the year eighteen hundred and one: And are the citizens of this State disposed to commit every thing dear to them, for the space of thirteen years, to a government, constituted as the new one is to be, with only eight representatives for part of the time, and thirteen for the remainder of it?—Are the States having slaves, to have according to the number of freemen a much greater representation than this State? And if there had been no objection of this kind, are the State governments to be subject to annihilation, and, when this is accomplished, is the principle of property, which is now contended for as the rule of apportionment, to be then the rule for electing representatives, whereby sixty or a less number of wealthy men, may elect as

many representatives as sixty thousand yeomen? What is the number of freemen in Great-Britain, and how many representatives have they? The number, I think, is computed to be about eight millions, and "the number of English representatives, is five hundred and thirteen, and of Scots forty-five, in all five hundred and eighty-eight." In this proportion we should have a representative for every thirteen thousand six hundred inhabitants, and this State would have thirty representatives in the new Congress. Will the people of this State intrust themselves to a government which will have the power, and every motive to reduce the number of representatives to one half or to one quarter of what they are now to be, and thus to deprive the citizens of their best security for liberty? I think they will not, and that it ought not to be expected of them.

(To be continued.)

2 February 1788

(Concluded from our last.)

To the Members of the Convention of Massachusetts.

Honourable Friends, and Fellow Citizens,

4.13.26 I am sensible it will be said the Constitution provides "that the electors in each State shall have the qualification requisite for electors of the most numerous branch of the State legislatures." But the new Constitution was evidently intended to, and must in its operation inevitably produce an abolition of the State governments, and when this is accomplished, the rule of apportionment of representatives according to property, must and will apply to electors, and have the effect mentioned. There would nevertheless be some consolation, if these were the only objections relative to representation in the new system, but in the second sect. of the first art. there is a provision that "no person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States," &c. had this provision extended to the foreigners who under the government of the United States, had contended for the establishment of our independence, it would have met with no objection; but as it now stands, any foreigner having attained the age of twenty five years, having been seven years a citizen of the United States, and being an inhabitant of any State, may be elected a representative—and the right of being elected senators, is confirmed to foreigners who shall have attained "the age of thirty years," and "who shall have been nine years a citizen of the United States, &c." Thus are we to have a supreme legislature over us,

to consist as well of foreigners, as of freemen of the United States.—CITIZENS OF AMERICA! What have you for a number of years been contending for? To what purpose have you expended so freely the blood and treasures of this country? To have a government with unlimited powers administered by foreigners? Will there not be immediately planted in the several States, men of abilities, who, having the appearance of privates, will nevertheless be in the pay of foreign powers? Will not such men ingratiate themselves into your favour, or, which will be much better for them, into the favour of the new government? And after seven years residence, will they not be in your federal house of representatives, or after nine years residence in your senate? Will not the most important secrets of your executive, respecting treaties and other matters, be by these means always open to European powers? Will you not be engaged in their trials? Will not your interest be sacrificed to their politicks? And will you not be the puppets of foreign Courts? Perhaps you will be told that this provision will encourage emigrants, who will bring their money to America; but will you for such precarious and futile prospects consent to part with the right of governing yourselves? How carefully is this point guarded by Great-Britain. Judge Blackstone, book first, chap. tenth, says, "naturalization cannot be performed but by act of parliament, for by this an alien is put in exactly the same state as if he had been born in the king's legiance, *except* only that he is *incapable* as well as a denizen of being *a member of the privy council, or of parliament,* no bill for naturalization can be received in either house of parliament without such disqualifying clause in it."[24] Other European powers are equally careful to exclude foreigners from their councils, whilst we, *too wise* to be benefited by the experience of governments which have existed for ages, and have attained the zenith of power, are adopting new principles, and exposing ourselves to evils which must inevitably lead us to destruction.

What I before hinted respecting the danger of ratifying the new Constitution, as it stands, is now too evident to admit of a doubt: The opposition in Pennsylvania have been so imprudent as to burn in effigy, Judge M'Kean and Mr. Wilson, two of the leading members of their State Convention. The offenders are of obscure, and perhaps contemptible characters, and there is danger, *that* they will be arrested, without considering the probability of their having been excited to this outrage by men of influence—that the government will be opposed—and that a civil war will commence, which will flame through this continent, the consequences of which are to be dreaded: Thus will the fairest prospects that ever a people had of establishing for themselves *good government,* be at once blasted by *imprudent zeal* and *cursed ambition.* 4.13.27

The virulent supporters of the new system, say, as those did in the parliament of Great-Britain, who pushed the American revenue-acts, that the opposition consists principally of men of *low* and *vulgar* minds, but the 4.13.28

event will be much the same in the one case as in the other: The yeomenry supported by men of abilities and integrity in the several States, and standing on the ground of *right*, will *maintain it:* and in case of a war, will derive [drive?] from this continent, many valuable men amongst us, who although now deceived by an aristocratick party, will be considered as *usurpers* and *tyrants*. These are not the apprehensions of a timid mind, they are predictions founded on our own experience, and God grant, that the wisdom of this Convention, on which is suspended the fate of America, may avert the impending evil. You have now the *confidence* of your countrymen, and it is hoped will not be deprived of it, by the arts of any individuals *with interested views:* You are now in possession of an *inestimable jewel*, which if lost by a hasty ratification, will never be regained. It is not my wish to make any objections to the new system that are not well founded, and such I conceive to be those against biennial elections: For, considering the extent of the continent—the complicated business of the legislature—the experience requisite for its members—the necessity of their punctual attendance—and their arrangements for quitting their States, and familiar biennial elections, are not *lengthy* or *dangerous;* but can there be any reason, that in the first Congress, when the most important institutions and provisions will be made for carrying into effect the new system, Massachusetts, who according to her numbers of freemen, is entitled to nearly eleven out of sixty-five, should have but eight representatives? It must clearly appear, by my former numbers, that by the clause for regulating representation, we are to be reduced to the level of slaves, and that we shall soon be such, if the planters of the south are to send to the new Congress, representatives for three fifths of their *negroes*. But if this rule was even admissible, we are entitled to above nine representatives according to the present enumeration, and are told, as a consolation for having but eight members, that New-Hampshire has the deficient member, which to us is the same thing. This to me is unintelligible, for the members of both houses are to be paid out of the continental treasury, to which we shall contribute a full proportion according to our property: Why then should we give up to any State whatever, the important privilege of sending a representative? New-Hampshire is a good neighbour, but like other States, has her separate interests, and in pursuit of it, our's may and will be sacrificed, by such an unreasonable concession. It is remarkable, that in the new system there is no qualification of property, for members of either branch of the federal legislature. It is surprizing to some gentlemen in Convention, that others should wish "to exclude from the federal government *a good man*, because he was not a rich one"[25]—No such thing is in contemplation, but on the other hand, they wish to send him there, and want to know what security there is, that a good man, not being wealthy, shall long continue to be eligible to such an office? If there was provision in the Constitution, that any citizen having three, six, or even nine hundred pounds estate, should be eligible, and that one of those sums

should be requisite to qualify him, the publick would be equally guarded against a representation of persons having no property at all, and an exclusion of good men, because not wealthy: But the objection to the Constitution is, that it has no provision for securing the eligibility of good men. If good members without much property, should oppose the wealthy but unprincipled ones in Congress, and prevent their passing oppressive acts, such as revenue-acts, calculated to promote peculation—to protect defaulters—and to plunder the people, (as this system undoubtedly will of all their property) will not those unprincipled members exert themselves to pass an act, requiring for senators and representatives so high a qualification of property, as to exclude for ever from Congress, the good men who have not great estates? Surely they will, being fully authorized thereto by the *omnipotent* clause, enabling Congress "to make *all laws* which shall be *necessary* and *proper* for carrying into execution the foregoing powers and *all* other powers, vested by this Constitution, in the government of the United States, or in any department or office thereof." This I call an *omnipotent* clause, for I must believe the man who says, that he can see in its *aphelion,* a comet which requires a century for its revolution, as soon as him that says, he can see the extent to which an artful and arbitrary legislature, can by this clause *stretch* their powers. We shall next consider the most important clause respecting representation, in art. 1st. sect. 4th. which provides, "that the times, places, and manner of holding elections for senators and representatives, shall be prescribed in each State by the legislature thereof: But the Congress may at any time by law, make or alter such regulations, except as to the places of choosing senators."—Great *ingenuity* has been manifested in attempts to explain away the *meaning* and *tendency* of this *fatal* clause—a clause destructive of the *small* but *best* security which the people by the new system will have for preserving their liberties: Let us candidly attend to the arguments urged on this occasion. One is, that the legislatures, or as they are called the *sovereignities* of the States, are to be the constituents of the federal senate, and the people, the constituents of the house of representatives; that in the frequent struggles and contentions between these two branches to depress and controul each other, each will be supported by its constituents, and therefore that the State legislatures, if uncontrouled by the federal legislature, would endeavour so to regulate the times, places, and manner of holding elections, as to deprive the people of their right of representation—Here, besure, is the *appearance* of great tenderness for the *rights* of the people, and *nothing but the appearance;* for an *imaginary danger* of losing[26] their rights is held up to them to introduce a *remedy* which must inevitably deprive them of those rights. That there will be such struggles and contentions between the two branches, is admitted—but is it natural to suppose, that the State legislatures, in aid of the federal senate, will wish to destroy the federal representation? Are not the members of one branch of the State legislatures *in all the States* and of the other branch, in

most of them, elected annually, or for a less time? Are not those members dependent on the people for re-elections, and equally with them affected by all federal and state laws? Can those members have any *separate* interest from the people for destroying the balance in the federal legislature? And if they could have such a separate interest, and should attempt to impair or destroy the right of choosing federal representatives, would not the people instantly feel the injury, and leave out of the legislature men so inimical to their rights? Was there no controuling power in the federal legislature for altering or regulating the times, places, and manner of holding elections, would not the people, by annually electing those who are to make the regulations, have every check requisite for securing the right of elections? If, indeed, the members of the State legislatures held their offices independent of the people, and had separate interests, there would be some ground for the argument—but, dependent as they are, and having the same interests with the people, they cannot.

VII

6 February 1788

To the Members of the Convention of Massachusetts.

Honourable Friends, and Fellow Citizens,

4.13.29 Let us, however, suppose the federal senate, in such a mighty squabble calling on their constituents, the State legislatures, for aid to impair or destroy the democratical federal branch.Is it possible that the members of any State senate or house, would "introduce such regulations, as would render the right of the people, insecure," or "make an unequal and partial division of the State into districts," or "disqualify one third of the electors," as has been urged?[27] Would the members from Worcester, or Hampshire, in either branch consent to regulations which would deprive their constituents of their suffrages and increase the privileges of the electors of Suffolk, or any other county? Could the members in either branch of the State legislature, ever have a motive to adopt such measures, as would deprive *themselves* as well as their constituents from influencing the elections of federal representatives? Will not the members of the State legislatures, *as part of the collective body,* be the constituents of the *federal representatives?* Will not the State legislatures, being thus the constituents of both branches, be the only *safe* and *proper* umpire for preserving the harmony and ballance of the federal legislature? Will not the State legislatures knowing there can be no security for property under a *rapacious aristocracy,* leave out of the federal senate every member that shall aim at an undue controul of the house, and endeavour to produce by the people the

same change of such federal representatives, as shall encroach on the rights of the senate? Surely they would; and it is unnatural to suppose that the State legislatures can have any interest in aiding the federal senate to destroy the ballance of the federal legislature, or if they had, that the measure would be attempted; or if it was, that the people would need any other assistance, than their rights, under the State Constitutions to defeat the attempt. But let us suppose there is some danger of this evil, is it to be avoided by incuring one much greater? The federal senators, except two thirds of the first senate, will be always elected for *six* and the house for *two* years. The members of both the federal branches from the *duration* and *respectability* of their appointments, and from their *lucrative* establishments, *to be made by themselves,* will have a great interest in their *offices,* and every motive to *perpetuate them.* This will be a common interest, and may, (as I think will evidently appear) be attained without even altering the form of the new Constitution, so excellently well adapted is it, to the establishment of *a baleful aristocracy.* The federal legislature may, as has been shewn, and undoubtedly will, make the qualification of property so high, as that few in each State can be elected to either the senate or house: Whilst the revenue laws and other civil establishments in the executive and judicial departments of the union, will necessarily produce through the Continent, *swarms* of officers, who being nominated by the President, and appointed by and with the advice and consent of the *senate,* will be in *their interest,* and in the *interest* of the *house* likewise, as grants will be made by their joint concurrence. All the federal *military* officers will be appointed in the same manner, and be in the same interest—all the *militia* officers, through the continent, where appointments are by the new system, reserved to the States, will nevertheless, as the military officers under the present Confederation, be commissioned by the President of the United States, and attached to the congressional interest. All the late officers of the army who are a very reputable and influential body of men, and who are united by an institution, which gives them ten times the influence, they would otherwise have, will have the same attachment to federal government. How easy then, will it be *with such support,* for a body of such able men as will compose Congress, to establish the elections of federal representatives at the *metropolis* as at *any other place,* in each state, and when this is effected, to collect the *congressional* or *crown* officers (as they soon will be called) at that place, and carry the elections for these senators and representatives who shall be in the aristocratical interest of the federal government, leaving out all *honest republicans,* who shall have been so vulgar as to have paid any regard to the interest of their constituents?

1. Seneca, *Of a Happy Life* VII, 1–2.
2. The date of this resolution was 22 February. *Acts and Resolves of Massachusetts, 1786–1787* (Boston 1893), 1786, January session, ch. 43A.
3. The date of this resolution was 10 March. Ibid. ch. 147.

4. Wilson told the Pennsylvania ratifying convention on 28 November, "I freely confess that if its adoption will necessarily be followed by the annihilation of the state governments, the objection is of very great force, and ought to be seriously weighed." McMaster and Stone 264. See Federal Farmer XVII, 2.8.204 n. 123.

5. The letter from the Convention transmitting the Constitution to Congress is reprinted in Elliot I, 305–6; Farrand II, 666–67.

6. Indeed, since these men were convened and presumably acting under the authority of their several commissions, it might well be argued that they had *less* right than a private group to propose a new form of government. James Wilson agreed substantially with A Republican Federalist. Farrand I, 253 (16 June); cf. Hamilton's justification, ibid. 283 (18 June). On the legal authority of the Convention, see Lowndes 5.12.2 n. 9. On the character and authority of the framers, see Centinel I, 2.7.5 n. 2; Federal Republican 3.6.5 n. 4.

7. Printed in Elliot I, 306–7; Farrand II, 608–9.

8. Printed in Elliot I, 319. A Republican Federalist makes some modifications in the language of the resolution, notably in his failure to write, "Resolved *unanimously* . . ."

9. *Second Treatise of Civil Government.*

10. Massachusetts Constitution, 1780, ch. VI, art. 10, in Thorpe, *Federal and State Constitutions* III, 1911.

11. Cf. Martin 2.4.35–36; Centinel XV, 2.7.164; Cornelius 4.10.5 n. 3; Lowndes 5.12.1 n. 2; Impartial Examiner 5.14.1; Denatus 5.18.4 n. 1; Countryman 6.7.4; Plebeian 6.8.11.

12. Articles of Confederation, Art. 13, which in fact reads, "shall be inviolably observed by every state, and the Union shall be perpetual . . ." etc.

13. "The people of this commonwealth have the sole and exclusive right of government in themselves, as a free, sovereign, and independent state; and do and forever hereafter shall, exercise and enjoy every power, jurisdiction and right, which is not, or may not hereafter be, by them expressly delegated to the United States of America in Congress assembled." Massachusetts Constitution, 1780, Declaration of Rights, Art. IV, Thorpe, *Federal and State Constitutions* III, 1890.

14. Sir William Temple, *Of Popular Discontents*, in *Works* (London 1731) I, 26. The quotation should read "known and common justice."

15. See III, 4.13.13.

16. The original reads, "led others if to a remedy. . ."

17. See below, n. 18.

18. See McMaster and Stone 280, 282. McKean's remarks are discussed by Poplicola 4.11.1.

19. James Wilson, "Address to the Citizens of Philadelphia," 6 October 1787, McMaster and Stone 149.

20. See above, n. 9.

21. It is difficult to guess how the author meant this sentence to read. "Increase" is probably a typographical error (for, e.g., "erase"?), but even at that, the sentence is incomplete. See C. C. Pinckney, Elliot IV, 283; *The Federalist* no. 54.

22. The Massachusetts ratifying convention had met on 9 January 1788 and was still in progress as this was written.

23. Cf. *The Federalist* no. 58.

24. *Commentaries* I, 373–74.

25. In reply to an argument by General Thompson in the Massachusetts Convention that there should be some property qualification for representatives, Federalist Theodore Sedgwick said that the argument was anti-democratic and that he "was surprised that gentlemen who appeared so strenuously to advocate the rights of the people should wish to exclude from the federal government a *good* man, because he was not a *rich* one." Elliot II, 25.

26. The original reads, "loosing."

27. Quoting a comment made by Theophilus Parsons in the Massachusetts ratifying convention, 16 January 1788, Elliot II, 27.

Essay by Samuel

(BOSTON) INDEPENDENT CHRONICLE AND
UNIVERSAL ADVERTISER
10 January 1788

While this short essay contains many of the standard Anti-Federalist objections—the extensive powers of Congress, the absence of a declaration of rights, the destruction of the states, the violation of the provisions for amendment of the Articles of Confederation—it is notable chiefly for its discussion of representation and taxes. Samuel examines the relation between the initial representation laid out in the Constitution for each state, the population, and the most recent distribution of the continental taxes, and contends that the eastern states are under-represented (4.14.1–2). The essay contains, in addition, a strong objection to the Constitution's "rejection" of religion, on the ground that no state can exist without adopting some system of religion (4.14.7–8). Samuel argues that the oath to support the Constitution will preclude the possibility of any amendments and, more pertinently, observes the significance of the fact that the oath requires support, not of the United States or the people thereof, but of the Constitution: "it may from this no doubt be expected that Proclamations will conclude GOD SAVE THE CONSTITUTION!" (4.14.6).

Mess'rs. Adams & Nourse,

By inserting the following in your paper, you will gratify some of your Readers, and I hope not disserve the Public.

I was at first in favour of the proposed national Constitution's taking place: 4.14.1
But when I noticed the following thing in it, I cannot wish to have it adopted, unless I could be convinced that I am herein altogether mistaken. For by looking in said Constitution, Art. I, Sect. 2.—I find that the number of Representatives from each State, and direct taxes, are ostensively both fixed on the same basis, viz.—The numbers.—But when it comes to apportion the Representatives, to the several States, it diverges extremely wide from that basis; as appears by the Continental tax, which issued from the

Congress nearly the same time.[1] According to which, Georgia (as in said Constitution apportioned) is represented six fold Rhode-Island; more than five Massachusetts; nearly five Connecticut.—Connecticut pays more tax than York; yet York sends most Representatives. The mean number in said tax, for sending a Representative, in the New-England States, is in comparison with the mean number in all the rest, nearly as 5 to 4. For the mean number of said tax, in the New-England States, to send a Representative, is 29,447 dollars. In all the rest of the States, it is but 24,996 dollars. Or if we take the numbers, according to the last enumeration I find extant, it will stand about as 7 to 6. For the mean number of persons in the New-England States, to send a Representative, is 42,941,—In all the rest of the States, it is but 36,666. But some perhaps will say, Georgia is a growing State, and has increased, since said enumeration. 'Tis likely they are increased, since that enumeration: But the tax was about the same time of the Constitution; and the disproportion by the tax, as to Georgia, is nearly the same, as by that old enumeration. But suppose Georgia is increased, since said old enumeration; perhaps no one will pretend the other States have grown less; if they have in numbers, they have not in taxes, in proportion to Georgia. But the other States have not their proportion of Representatives, according to said old enumeration.

These Representatives are to set their own wages, to be paid out of the Continental Treasury; therefore the New-England States will have to pay nearly every fifth dollar, to support Representatives in the other States, according to the apportionment in said Constitution.

4.14.2 I at first flattered myself, that this inequality would be remedied, when the actual enumeration is made.[2] But on further notice found my mistake that there is no prospect of its being better, but worse. For tho' the Constitution says, that the Representatives shall be apportioned among the several States, according to their respective numbers; yet it says, they shall not exceed one for every 30,000: But does not say, we may have one for every 30,000; and it cannot rationably be supposed, that it is designed it ever should be so. For they have not set out so, by a very great proportion: For allowing every State its one Representative for every 30,000, according to said old enumeration, and throwing away the fractional parts of 30,000, in each State, would make thirteen more Representatives in the whole; and six of those thirteen, would be in the New-England States, almost half of what is left out; yet those four States, send but about a quarter, as now apportioned. Yet Georgia is allowed to send three times as many as the proportion which the Constitution says it shall not exceed. And if such strides are made now, while we are invited to accept of it, we may fully conclude that if once we should adopt it, these four States, which are now so far reduced below par, would be reduced to no more than one Representative to each State; and therein would not stride the letter of the Constitution, as they have now, in the case of Georgia: For it would not transgress the letter of the Constitu-

tion at all, to reduce any State or States they please, to one Representative each. And they may, as well as what is done now in the case of Georgia, exaggerate the number of Representatives, in any other State to what number they please; and we should have to maintain them, at any price they shall please to lay upon us. And this would serve, not only to secure an over-bearing ballance in the House of Representatives, when the Congress please, against any State or States; but also the choice of the President and Vice-President, to any favourite party of States, that the Congress shall think proper. For the number of electors, and the number of Senators and Representatives, are always to be equal in each State. For the satisfaction of all who would be curious to know, the following Table shows the number of dollars, each State pays in said tax, and the number of persons, according to said enumeration, to one Representative.

		Dollars.		*Persons to a Representative.*
New-Hampshire,	pays	19,894	and has	33,333
Massachusetts,		31,779		43,750
Rhode-Island,		36,558		60,000
Connecticut,		29,995		44,000
New-York,		24,299		33,333
New-Jersey,		23,593		30,000
Pennsylvania,		29,077		43,750
Delaware,		25,506		45,000
Maryland,		26,724		36,666
Virginia,		29,077		40,000
North-Carolina,		24,690		40,000
South-Carolina,		21,799		40,000
Georgia,		6,064		8,333

And the whole of the purse, and of the sword, is put into the hands of the President, and a Congress so unequal, and which also may consist, of men of no principle or property. For no religion or property is required, as any qualification, to fill any and every seat in the Legislative, Judicial and Executive departments, in the whole nation. That a Pagan, a Mahometan, a Bankrupt, may fill the highest seat, and any and every seat; nothing but age and residence, are required, as qualifications, for the most important trusts. And there is nothing to hinder their keeping a standing army, at all times, peace or war. Nor is there any provision made for the people or States, to petition or remonstrate, let their grievances be what they will. Should Massachusetts, for instance, be reduced to one Representative, it cannot complain, but is liable to be construed into sedition and rebellion; and the standing army employed to suppress it; as the British standing army were to subdue America. And there is nothing to hinder, but ample provision made, for Congress to make themselves perpetual. For by Art. I, Sect. 4. the 4.14.3

Congress may at any time, make and alter the time, place and manner of choosing Representatives; and the time and manner of choosing Senators. They may also make the President, and Vice-President perpetual; or he, the President, may make himself so, by the help of a little more than a sixth part of the Congress. For the Congress are to appoint the time, and place of choosing the electors, and the day of their giving their votes. Art. II, Sect. 1st. paragraph 4. And if the Congress don't see cause to appoint a time and day for those purposes, there can be none chosen, the old ones continue; or if the majority of the Quorum, appoint the time and day for choosing the electors, and of their giving their votes, the President may so far negative it, as that there must be two thirds of both Houses to make it valid; and the standing army they may keep in time of peace, they may canton where they please, to suppress any complaints that may arise by oppression, or loss of rights or privileges.

4.14.4 And thus also, they may exempt themselves, and all their dependants from all taxation; not only Continental, but State taxation, laying heavy burdens on others, and not move them with one of their fingers. How then will they represent the people? For it is essential to a Representative that he feels all the burdens he lays on the community he is to represent. This is not a mere chimera, for the Constitution appears evidently calculated, to swallow up all State government and authority. For tho' there is frequent mention made of State Legislatures; yet they have no power or authority, as plainly hinted in several places, but very expressly declared, article VI, paragraph 2d, "This Constitution, and the laws of the United States, which shall be made, in pursuance thereof; and all treaties made or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the Judges in every State shall be bound thereby; any thing in the Constitution or laws of any State to the contrary notwithstanding." This is a bold and decisive stroke, whereby all State authority is at once absorbed, or annihilated; and especially when considered in connection with article III, Sec. 2d. "The Judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made" &c. But there is no provision made for any tryal by Jury, except in criminal cases, and how they are to be packed we don't know. And the President with two thirds of the Senators present, is to make those omnipotant treaties. Art. III. Sect. 2d, which are to supercede all State laws, and which may be, to cede any part of the territory, to a foreign Prince, to hire him to guarantee to him the President to be the sole absolute despot of the rest; or any other purposes he pleases. And this two thirds of the members present, may consist of no more than two persons; for there is no quorum affixed to them, only in their Legislative capacity. But make the best we can of it, and apply the Legislative quorum here, it will require no more than the Senators of five States, viz. ten Senators, to make any treaties the President pleases; which may affect the

territory, laws or commerce, of some States to advantage; at the expence, or to the prejudice of other States; or even to the giving up some States, to a foreign Prince, as before suggested.

The most complaints, that I have heard made about the proposed Constitution, are that there is no declaration of rights. In the confederation, there is a declaration of rights, of the contracting parties, viz. The several States. But here is none, either of States or of people. And we by this time see the reason of that omission, viz. because there are no rights left, either to the States or people; and it would have been inconsistent to have attempted any thing of that kind; or declared any rights remaining, after all was given up claimed by this Constitution. 4.14.5

But some have supposed, they have a *salvo* for all difficulties, that may arise in said Constitution, by the 5th Art. entitled *amendments provided*. But all amendments, are effectually guarded against in the next Art. paragraph 3. For there we find, all the members of Congress, and all the members of the several State Legislatures, and all the Executive and Judicial officers, both of the United States, and of the several States, are to be bound by oath or affirmation to support this Constitution. How then can we have any amendments, as speciously pretended in said 5th Article? When all those from whom only it can originate, are to be bound by oath, to support this as it is. Besides, it is not likely, that the President, or Congress, would be so impolitic, as to oppress so large a proportion of the States at once, as two thirds; therefore, there is no probability, and scarcely possibility, that ever a motion of two thirds should arise. Moreover, could we obtain a Convention, and by them amendments proposed; they might lie dormant forever, if the Congress did not see cause to appoint how the amendments should be ratified; which is not to be expected, if the amendments should be to diminish their power; so that all the parade about amendments, comes to nothing. But to return to the oath; there is something very singular in the manner of the oath; that all Continental and State officers, should be bound by oath, to preserve, protect, defend and support this Constitution. And not rather be under oath, to preserve, protect, defend and support the United States, or the people thereof, in their rights and privileges; it may from this no doubt be expected that Proclamations will conclude GOD SAVE THE CONSTITUTION![3] 4.14.6

In the same paragraph, in which the above oath is instituted, all religion is expressly rejected, from the Constitution. Was there ever any State or kingdom, that could subsist, without adopting some system of religion?[4] Not so much as to own the being, and government of a Deity; or any acknowledgment of him! or having any revelation from him! Should we adopt such a rejection of religion as this, the words of Samuel to Saul, will literally apply to us,—*Because thou hast rejected the word of the Lord, he hath also rejected thee from being king.*[5] We may justly expect, that God will reject us, from that self government, we have obtained thro' his divine 4.14.7

interposition: Or being able to keep up government and order among us; for he has commanded the rulers of the earth, to kiss the son, lest he be angry, and they perish from the way.

4.14.8 If civil rulers won't acknowledge God, he won't acknowledge them; and they must perish from the way. And there can be no rational doubt, that the prevailing neglect of acknowledging God in the time of the revolution, and since, is the cause of our having such convulsions as have been among us; we are perishing from the way.[6]

4.14.9 Again, I find in the last acts of the Constitution, that it is an open professed resolution, to break a solemn covenant, made by the several States, in the confederation *of the United States of America*. Which having named the States, in the 3d, article, says "the said States hereby severally enter into a firm league of friendship, with each other, for their common defence, &c."—Then going on to describe this *firm league*, till it comes to the last Art. it concludes, "And the articles of this Confederation, shall be inviolably observed by every State; and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to, in Congress of the United States, and be after-wards confirmed by the Legislatures of every State." But this new Constitution, does not appear to be agreed to by Congress, neither is it a Confederation of the States; but professedly of the people, as in the very first words of it; and concludes, that the ratification of the conventions of nine States, shall be sufficient for the establishment of this Constitution, between the States so ratifying the same." This is expressly repugnant to the Confederation, the sacred national covenant we are under; and to set up a schism in the nation.[7] This is not proposed to be done by the same contracting parties. For that was a covenant of union between the States. This is to be by the people of the States, to throw off all their allegiance to the federal Constitution of the nation, and the covenant Constitutions of the several States: And if the conventions in nine States will adopt it, then to seperate, and set up this in violation of all covenant obligations, of the most solemn important kind and consequence.

4.14.10 But almost every one is possessed with a persuasion, that some farther powers are necessary to be vested in the National Head, the Congress; perhaps I am as strongly possessed of that apprehension as any one; therefore, at first, I felt passive, or rather inclined that this Constitution should be adopted, not considering the nature of it. But why should we break such solemn covenant, as this Constitution resolves to do? And plunge ourselves into such a labyrinth of innovation, which it is impossible for any one to for-see, or perhaps to guess where it will land us, or what we shall meet by the way? This Constitution does not wear the complexion of uniting the nation—but of dividing it. Had we not much better keep on our old ground? The national covenant we are under, solemnly ratified to be perpetual, and amend that: It is, no doubt, as easy to amend that, as it will be to amend the

new one. And this I understand, was the *sole purpose* the federal Convention was appointed for, viz. To revise the articles of confederation, not to destroy the covenant. Why should we be fond of another revolution so soon? Why should we be fond of such an innovation? Let us hear what a sage old politician, once said on a similar occasion, after having described to the people, the nature and consequence of the innovation, they were urging for, says, *Ye shall cry out in that day, because of your King, which ye have chosen you: and the LORD will not hear you*.[8]

Samuel.

1. Report of Board of Treasury on Requisition of 1787, *Journals of the Continental Congress* XXXIII, 569–85.
2. See references to Federalist arguments to this effect, Federal Farmer V, 2.8.137 n. 88.
3. Cf. the charming proposal by Thomas Paine for crowning the Constitution. *Common Sense* (1776), "Thoughts on the Present State of American Affairs."
4. Cf. Federalist and Anti-Federalist discussions of need for religion, Turner 4.18.2 n. 2.
5. I Samuel 15:23.
6. Cf. Benjamin Franklin's speech on 28 June at the Federal Convention. Farrand I, 450–52.
7. See Republican Federalist III, 4.13.15 n. 11.
8. I Samuel 8:18.

Essays by Hampden

MASSACHUSETTS CENTINEL
January–February 1788

Hampden favors adopting the proposed Constitution conditional upon adopting at the same time certain amendments. He would deprive the Congress of the power to lay taxes other than impost and excises, but otherwise his proposed amendments deal with individual rights and the jurisdiction of the federal courts. In his second essay Hampden agrees that amendment of a constitution should normally be difficult but contends that amendments prior to approval are both desirable and likely to meet general agreement. Harding speculates that the author may have been James Sullivan, but the grounds are extremely treacherous.[1]

1. Harding relies mainly upon some similarities between objections of Hampden and objections made by Sullivan elsewhere; but Sullivan appears to have written a series of Federalist essays as Cassius, and Hampden says that he had written nothing else. Harding concedes these facts but does not try to explain them. See Harding, *Contest over Ratification* 31–32. Warren is dubious of the identification; Massachusetts Historical Society, *Proceedings* 64 (1932): 147, n 6.

26 January 1788

Mr. Russell,

4.15.1 I have had no hand in the productions respecting the proposed plan of government—but I feel interested as a citizen. I have waited to see if any motion might be made, or any disposition appear in the Convention, to prevent one of two evils taking place; the first is, *that of rejecting the Constitution;* the second is, *that of adopting it by a bare majority.*

4.15.2 I am not contented with it as it now stands, my reasons are assigned:—

I am not satisfied with the provision for amendments, as it stands in that system, because the amendments I propose, are such as two thirds of the Senate will perhaps never agree to—the indictment by grand jury, and trial of fact by jury, is not so much set by in the southern States, as in the northern—the great men there, are too rich and important to serve on the juries, and the smaller are considered as not having consequence enough to

try the others; in short, there can be no trial by peers there:—The middle States gain advantages by having the legal business done in one of them, which may prevent their leading men, from engaging seriously in amendments:—I therefore propose the adopting the Constitution, in the following manner, in which I conceive there will be great unanimity.

THAT this Convention do adopt and ratify the Constitution, or frame of government for the United States of America, proposed by the Federal Convention, lately holden at Philadelphia; upon the following conditions, viz. 4.15.3

That the first Congress which shall be holden under the same, shall before they proceed to exercise any powers possessed under the Constitution, excepting those of organising themselves, and of establishing rules of procedure, take into consideration all amendments proposed by the Convention of this or any other State, and to make such amendments therein proposed as aforesaid, as any seven of the States shall agree to; and which amendments shall be considered as a part of the Constitution.

And that the Senators and Representatives of the several States, shall set together in one body, and vote by States, in considering such amendments;—but the President or Vice-President elect, shall have no vote therein.

THE AMENDMENTS PROPOSED.

FIRST. *In the fourth section of the article of the Senate strike out these words,* "But Congress may, at any time, by law, make, or alter, such regulation, except as to the place for choosing Senators;" *and insert these words, "But if any State shall refuse to prescribe time and place for such elections, Congress shall provide therefor by laws made for that purpose."* 4.15.4

Remark—this amendment takes off the main objection made to this article, and gives Congress power to perpetuate its own existence.

2d. In the second clause of the ninth section insert the words—"And the Supreme Judicial Courts of the several States and either Judge thereof, shall have power to issue this writ."

This secures the right of Habeas Corpus, without going to Pennsylvania for it.

3d. In the eighth section of the powers of Congress, strike out the word, "Taxes."

This leaves the powers of impost and excise to Congress. And should war, or any other circumstance render internal taxes necessary to be in Congress, they may have the power granted hereafter.

4th. In the second section of the Judiciary Power, strike out the following words, "Between a State and a citizen of another state, between citizens of different States."

Laying a State liable to be sued, robs it of all its sovereignty, and in this case may lay the several States liable to be sued for their publick securities.[1]

5th. In the second clause of the same section, strike out the words, "Both as to law and fact," *and add to that clause these words*—Provided nevertheless, that all issues of fact shall be tried by a jury to be appointed according to standing laws made by Congress.

This will preserve the inestimable right of a trial by jury—This right is the democratical balance in the Judicary power; without it, in civil actions, no relief can be had against the High Officers of State, for abuse of private citizens; without this the English Constitution would be a tyranny—See Judge Blackstone's excellent Commentary on this privilege, in his third volume, page[2]

6th. In the last clause in the same section next after the word State, insert these words, In, or near the County.

This keeps up the idea of trial in the vicinity. See the Massachusetts declaration of rights on this point—Also, that of other States, &c.[3]

7th. At the end of the same clause, add these words—Provided that no person shall be held to answer to any charge of a criminal nature, unless it be upon indictment of a Grand Jury, appointed, sworn and charged according to known and standing laws.

This is the greatest security against arbitrary power; without this, every person who opposes the violation of the constitutional right of the people, may be dragged to the bar, and tried upon a bare information of an Attorney-General.—The loss of this privilege carries with it the loss of every friend to the people.—There is no instance yet, in England, or in America, excepting in the Stuart's reign, of a person's being tried for his life, otherwise than upon indictment. It was attempted before the Revolution, but successfully opposed.

Hampden

2 February 1788

Mr. Russell:

4.15.5 As I understand the fifth article in the proposed Constitution, it is provided by it, that when two thirds of the Senate, and two thirds of the House, (that is, as it appears to me, when two thirds of these bodies, separately) shall deem it necessary, they shall propose amendments, or when the legislatures of two-thirds of the States, shall apply for it, Congress is to call a Convention of all the States; this Convention when called, are not to be authorised to make amendments, but are only to propose them to the legislatures of the several States, and then if the legislatures of three fourth parts of the States shall agree to the amendments proposed, they are to be considered as a part of the Constitution.

I am exceedingly pleased with this mode, so far as it regards the purpose which it was intended to effect. When a government is in exercise, all innovations are dangerous; the forming, or amending a government, opens a wild field for speculation, and men of genius and ability will throng it: One amendment begets another, and that a third, until, perhaps, the parties are lost in the windings of their own arguments; and the people thrown into dreadful factions. Ideas like these have prevented, and do still prevent, the people in England, from attempting to regain an equal representation in Parliament. The exceeding *slow, precarious,* and *expensive* method for amendments, proposed in this Constitution, will prevent those frequent attempts which otherwise might create parties, to the great injury of the general government. 4.15.6

But this remedy is by no means calculated for those defects, which appear upon the plan, before it is adopted. It is only intended for those which may appear upon the exercise of it. The United States are under great obligations to the honorable gentlemen who formed this plan; but in a country, where learning, ability, and particularly the knowledge of politicks, are so universally disseminated, it would be very extraordinary, if those men, however great and learned, should produce a system in which no amendments, by others, should not be justly proposed. Yet if none could be proposed without introducing the confusion, which some people apprehend, we had, it may be said, better take it as it is. If there is no alternative but the ratifying this, or having no government, this position may be supported. But whether we had better adopt this as it is, or lay a foundation to obtain amendments before it is carried into exercise, is quite another question, and one which clearly exists. To ratify this, as it is, would be clearly deciding, that it is right, and a motion for immediate amendments would be preposterous: There are amendments, stated in my other paper, which are by no means local, and some of which, respecting the right of juries, I believe a majority of States will agree to. Mr. *Wilson,* has said that the Convention could agree upon no mode of expression to place this, as a constitutional right in the system.[4] I see no objection to the modes of expression, I have used in my other paper. If there is not, this secures the right. But should not seven states, assembled in Convention, as proposed, agree to any amendments, the Constitution remains as it is—but should they agree to any, those will be a part of it. 4.15.7

Hampden

1. See Brutus XIII, 2.9.161 n. 102.
2. Blackstone, *Commentaries* III, 23; see Democratic Federalist 3.5.6 n. 6.
3. Thorpe, *Federal and State Constitutions* III, 1891 (Art. XIII). See Plebeian 6.11.15 n. 13.
4. Wilson's speech to the Citizens of Philadelphia, 6 October 1787, McMaster and Stone 145.

Letter from A Customer

(PORTLAND, MAINE) CUMBERLAND GAZETTE
March 1788

In his first paragraph A Customer gives economical expression to a very characteristic Anti-Federal persuasion: the Constitution is derived from a political theory that would deflect popular attention from politics and religion to the pursuit of wealth and from direct responsibility for government to a remote representative system. The author goes on to object that the Constitution does not explicitly provide that a new President shall be elected after four years and that the Congress might decide to have the Chief Justice act as President.

Friend Wait,

4.16.1 We are now in a hopeful way. The lower class fall in with the views of some of the better sort who reprebate the old-fashioned ideas of 1775, viz. that the common people were good judges in the affairs of government; and that their time was well spent when it was devoted to the study of politicks and religion—the latter of which was then supposed to be necessary to the well being of civil society.[1] We leave our share in the general government, to ten men; and our State matters may soon be reduced. As to religion, our great folks are not obliged to make a declaration on that score; and if the lower class, who are desirous to imitate those who move in a higher sphere, should once be made to believe it unfashionable, we may turn our clergy a grazing—and employ our time, that heretofore has been employed in politicks and religion, to the pursuit of wealth, to enable us to pay our debts, and support the dependants on government in the style of the great men of the east.

4.16.2 I have one difficulty in my mind respecting our admirable Constitution, which I hope somebody will attempt to remove. Art. 3, sect. I—"The executive power shall be vested in a President of the United States of America: he shall hold his office during the term of four years." Here is no declaration that a new one shall be chosen at the expiration of that time. "Congress may determine the time of chusing the electors; and the day on which they shall give their votes." But suppose they should think it for the

publick good, after the first election, to appoint the first Tuesday of September, in the year *two thousand*, for the purpose of chusing the second President; and by law empower the Chief Justice of the Supreme Judicial Court to act as President until that time. However disagreeable it might be to the majority of the States, I do not see but that they are left without a remedy, provided four States should be satisfied with the measure. The President elected is not to receive any other emolument; yet the Chief Justice is not disqualified as a Judge. Why did our worthy Chief Justice, at Cambridge the year past, in his address to the Grand Jury, call upon them to support "that free and excellent Constitution, which it has lost the blood of thousands of our friends and fellow citizens to establish: that Constitution which has carefully separated and distinguished the principal departments of power—that they might never combine against the liberty of the subject:"[2] if it is not a necessary article in a constitution? If necessary in a State constitution, why not in one for the whole people? Was it not as easy to have said the President should be chosen every fourth year, as to have said the Representatives shall be chosen every second year? The celebrated Mr. King observes that this is not a confederation of States—for the style is in the name of the people:[3] therefore, it appears to me, the rights of the people should be as well guarded, on this point, here, as in the constitution of a State.

I send you a few pounds of flax—a most excellent article. It will employ 4.16.3
the idle, who may be out of business, to turn it into cloth; and when reduced to rags, it will be useful to make paper for your business. And if in some future day your press should be stopped, it will make small cords to tickle the idle and restless, and to bind the turbulent to their good behaviour.

Your press is free: therefore you will oblige me by inserting the foregoing in your useful paper.

A Customer

1. See below, Charles Turner 4.18.2 n. 2.
2. William Cushing was Chief Justice from 1777 to 1789.
3. Elliot II, 55–57. See Pennsylvania Convention Minority 3.11.30 n. 15.

Essays by A Farmer

(NEW HAMPSHIRE) FREEMAN'S ORACLE AND NEW HAMPSHIRE ADVERTISER
January–June 1788

The essays of A [New Hampshire] Farmer were published in the *Freeman's Oracle and New Hampshire Advertiser* from 11 January 1788 through 13 September 1788. The first essay elicited a response from Alfredus, which was published in the *Freeman's Oracle* on 18 January; A Farmer replied to it on 1 February; Alfredus responded on 8 February; and A Farmer returned to the attack on 6 June.

In the interesting first essay, the writer contends that even if James Wilson is correct that all powers not granted are reserved, the powers granted under the new Constitution are so generous, especially when taken together with the supremacy clause, as to invite expansion and to require the specific restraints of a bill of rights. He proposes a national jury to sit with the "judicial court of the United States." He urges the importance of protecting the freedom of the press, understood as freedom from "prior restraints." His argument against a standing army is more significant than most, for he shows not only its tendency to tyranny, but also the dangers of war to the morals of the people and the conduct of public affairs. After a (much less strong) discussion of the excessive salaries the legislators are likely to pay themselves and the need somehow to provide constitutional limits, A Farmer analyzes the commercial interests favorable to the Constitution and contrasts them with the interest of the farmers—who cannot put their land on their backs and leave if things turn out badly. The essay concludes with a proposal that men be elected to the state ratifying convention pledged to secure a bill of rights and other amendments to the Constitution.

The second and third of A Farmer's essays contain some further discussion of the issues of a standing army and trial by jury in civil cases. Regarding the latter, A Farmer includes a long quotation from Blackstone that is important in the Anti-Federalist argument. The debate then degenerated into personal abuse, and the subsequent exchanges, which contribute nothing of substance to the debate over the Constitution are not reprinted here (see note 5 to text below). They do, however, identify A Farmer as Colonel Thomas Cogswell, Chief Justice of the New Hampshire Court of Common Pleas.[1]

1. The identity is revealed on 13 June by Alfredus' reference to the military office held by his antagonist. Cogswell defended himself by name in the essay of 4 July. Alfredus also identified Cogswell as the author of *The Anti-foederalist*, No. 2, which appeared in the *Freeman's Oracle* on 8 February 1788 and is reprinted below, 4.23.4. In the American Antiquarian Society copies of the pertinent numbers of the *Freeman's Oracle*, the same hand that correctly labels A Farmer as Thos. Cogswell identifies Alfredus as Samuel Tenny (or Tenney), a New Hampshire surgeon and public figure. This is consistent with identification of Alfredus as a doctor by both A Farmer (4.17.13, 16) and the Anti-Federalist, Philo (*Freeman's Oracle* 16 August 1788). See *Dictionary of American Biography* (ed. Francis S. Drake, 1872) 204, 899.

I

11 January 1788

My Friends, and Fellow-Farmers,

Much has been said respecting the new Constitution offered you, by the Convention, under the direction of Congress; and much ought to be said, in favour of it, not only from the characters of those gentlemen who composed the Convention (whose characters I revere) but from the many excellencies it contains—Yet, neither the characters of the gentlemen, the excellencies it contains, nor the deranged state of our public affairs, ought to have so much influence upon your minds, as to adopt this Constitution, if it is incompleat. Examine it, my friends, with discernment and candor, and judge for yourselves—I think you will find the foundation is laid, and materials are wanting to render it compleat. 4.17.1

In order to adopt it, as it now stands, with any degree of safety, in my humble opinion, a Bill of Rights is absolutely necessary, to secure the liberties of the people. Although the celebrated Mr. Wilson, in his address to the citizens of Philadelphia, respecting a Bill of Rights, urged, that in a state constitution, every thing that was not reserved, was given; but, in a Federal Constitution, the reverse of the proposition prevailed, and what was not given was reserved.[1] I must confess it was ingeniously got over, but not to my satisfaction, (in many instances people may be silenced, but not convinced) for upon the very principle that Mr. Wilson urged, that there is no need of a bill of rights, for what is not given is reserved, would be the foundation I should go upon to urge the great necessity of one,—for if we look into the Constitution, we shall find the different articles therein contained, are expressed in very general and extensive terms; ONE, in particular, which is sufficient to show the necessity of a Bill of Rights, viz.—"This Constitution and the laws of the United States, which shall be hereafter made in pursuance thereof, shall be the supreme law of the land, and the judges, in every state, shall be bound thereby, any thing in the Constitution or law of any state to the contrary not withstanding;"—Therefore, I say, take this clause, together with the extensive latitude given in several other 4.17.2

articles, is too much power to lodge in the hands of any set of men, however virtuous they may be without being properly guarded; nor can I think it in the least derogatory to the honour of the supreme authority of the United States, to have a Bill of Rights stated in the Constitution, wherein it shall be declared, thus far you may go and no further. We have found by experience, the great advantage of a Bill of Rights in our State constitution; when the legislature passed sundry laws infringing on the Bill of Rights, we had it in black and white to show them they were wrong; and to their honour be it spoken, they have repealed one; and so far as the necessities of the people would admit the other.[2]

4.17.3 Much has been said respecting Congress exercising exclusive legislation in all cases whatsoever over a jurisdiction, not exceeding ten miles square, in such a place as Congress agree to reside in. If that is a Hobby Horse that Congress wishes to mount, and the state they conclude to reside in will give them the jurisdiction, and the individuals consent to it;—Let them mount, for if we prevent them they may get worse mounted. But on our part,—Let us secure the liberties of individuals of the United States, and guard and fetter the hobby horse, in such a manner, as not to let him kick our heads off, if we should have occasion to pass thro' or remain in that district a certain time—The judicial court of the United States is an object worthy of our serious attention, and to have a jury always to attend the same when sitting, composed of members from each state, is necessary to secure the liberties of the people. In order to this, let the President of each state cause a box to be made, and with the advice of council, enroll thirty of the most respectable characters in the state, and on the first Monday in January, every year, or any other convenient time; let the President order his Secretary to draught out two of the names of those persons so enrolled and put in the box, to attend the grand court of the United States as jurymen, whenever they shall sit. If any accident should prevent one or both said jurymens' attendance, and the obstructions appear sufficient to the President, then he shall proceed to a new choice; if otherwise, let them be fined for non attendance. And those two persons so draughted, having served one year, let their names be taken out of the box, and two others put in, and so in rotation. And once in three years let the box be examined by the President and council and corrected as circumstances require. The pay and travel, and mode of payment to be fixed by Congress.—Perhaps some will object against this, as being too expensive; but when we consider that here will be the result of causes of great magnitude; and the respectable appearance such a court will make; and the honour that will redound to the United States; I think, as a Farmer, I should be willing to contribute largely toward it; there will be two jurors, and one may be empannel'd no ways interested in the cause, but to do justice—The liberty of the Press is essential to a free people, it ought therefore to be inviolably preserved and secured in the Bill of Rights, and no duty or tax to be imposed thereon, of what name or nature

soever. But if individuals will publish indecent pieces, leave them to the law of the land to abide the consequence.[3]

Something has been said respecting the state of Vermont. I heartily wish 4.17.4
Congress would admit them into the union. The legislature of this state, in my opinion, ought to give it in charge to their members in Congress, to urge their admittance. As it now stands, they are daily draining off a large number of inhabitants from these northern states, from the idea that they pay no taxes, and finally will not have to pay any part of the Continental debt. It is certainly high time, that matter was decided, it is now about ten years since they declared their independence and have governed themselves accordingly—Standing armies are dangerous *in time of peace to the liberties of a free people*, provided they are kept and voted their continuance yearly, they soon get ingrafted into and become a part of the Constitution, therefore they ought not to be kept up, on any pretext whatsoever, any longer than till the enemy are driven from our doors. War is justifiable on no other principle than self-defence, it is at best a curse to any people; it is comprehensive of most, if not all the mischiefs that do or can afflict mankind; it depopulates nations; lays waste the finest countries; destroys arts and sciences, it many times ruins the best men, and advances the worst, it effaces every trace of virtue, piety and compassion, and introduces all kind of corruption in public affairs; and in short, is pregnant with so many evils, that it ought ever to be avoided if possible; nothing but self-defence can justify it.[4] An army, either in peace or war, is like the locust and caterpillers of Egypt; they bear down all before them—and many times, by designing men, have been used as an engine to destroy the liberties of a people, and reduce them to the most abject slavery. I have both summered and wintered with an army: You, my friends, in general, know nothing of the evils that attend it; guard and secure it well in your Bill of Rights, that it may not be in the power of any set of men to trample your liberties under their feet with it. Organize your militia, arm them well, and under Providence they will be a sufficient security. I have once born arms in defence of my country;—I am now willing to risque myself and property, together with my liberties and privileges, (with a well regulated militia) and when they are invaded, I will gird on my sword and appear in their defence. And, if my children after me will not do it, let them loose theirs with their heads into the bargain.[5]

Great complaint has been made, that Congress has been too liberal in 4.17.5
their grants of salaries to individuals, and I think not without just cause; for if I am rightly informed, there has been men whose salaries have been fifteen hundred dollars per year, and some of them did not do business at any rate, that the sum they negociated would amount to their yearly salary. And some men now in office, at twenty-five hundred dollars per year, who I think, would have been glad to have set down at one hundred pounds a year before the war,[6] and would have done as much or more business. The truth is, when you carry a man's salary beyond what decency requires, he im-

mediately becomes a man of consequence, and does little, or no business at all. Let us cast your eyes around us, in the other departments, the judges of the superior court have but about one hundred pounds salary a year. The judges of the courts of common pleas, on an average, not more than sixty dollars per year. The ministers of the gospel, a very valuable set of men, who have done honour to themselves, and rendered great service to their country, in compleating the revolution have salaries but from sixty to an hundred pounds a year in general. The contrast is striking. I heartily wish that all ranks of men among us, ministers of the gospel as well as others, would turn their attention toward the Constitution, they may be more concerned in the event than they at present think of.

4.17.6 Rouse up, my friends, a matter of infinite importance is before you on the carpet, soon to be decided in your convention, viz, The New Constitution—Seize the happy moment—Secure to yourselves and your posterity the jewel Liberty, which has cost you so much blood and treasure, by a well regulated Bill of Rights, from the encroachments of men in power. For if Congress will do these things in the dry tree[?] when their power is small, what wont they do when they have all the resources of the United States at their command?—They are the servants of the public;—You have an undoubted right to set their wages, or at least to say, thus far you and those under you may go and no further.—This would in the end ease Congress of a great deal of trouble, as it would put a stop to the impertinence of individuals in asking large salaries. I would say that the wages of a Representative in Congress do not exceed five dollars per day, a Senator not to exceed six, and the President seven per day, with an allowance for his table. And that the wages of no person employed in the United States exceed the daily pay of a Representative in Congress, but be paid according to their service, not exceeding that sum. Perhaps it may be said that money may depreciate, or appreciate—Let a price current be taken when this Constitution is compleated of the produce of each state, and let that be the general standard.

4.17.7 My friends and countrymen, let us pause for a moment and consider,—we are not drove to such great straits as to be obliged to swallow down every portion offered us by wholesale or else die immediately by our disease. We can form a Constitution at our leisure; and guard and secure it on all sides. We are paying off our state debt, and the interest on the domestic as fast as Congress call upon us for it. As to the foreign debt, they have the promise of more interest from us than they can get any where else, and we shall be able to pay them both interest and principal shortly. But it is said they will declare war against us, if we don't pay them immediately. Common sense will teach them better; we live at too great a distance, and are too hardy and robust a people, for them to make money out of us in that way.

4.17.8 But it is said, the trading towns are fond of this Constitution. Let us consider how they stand including their interest.

1st. The merchant wishes to have it adopted, that trade might be reg-

ulated. 2dly. Another set of men wishes to have it adopted, that the idea of paper money might be annihilated. 3dly. Another class of men wish to have it take place, that the public might be enabled to pay off the foreign debt, and appear respectable abroad among the nations. So do I, with all my heart; but in neither of these cases do I wish to see it adopted, without being guarded on all sides with a Magna Chartha, or a Bill of Rights, as a bulwark to our liberties. Again, another class of men wish to have it adopted, so that the public chest might be furnished with money to pay the interest on their securities, which they purchased of the poor solidiers at two shillings on the pound. I wish the soldiers were now the holders of those securities they fought so hard for: However, as the public finances were such that they could not be paid off as they became due, and they have carried them to market, and sold them as the boy did his top; we must pay them to the holders; but we need not be in a hurry about it, certificates will do for that.

Consider, my friends, you are the persons who must live and die by this Constitution—a merchant or mechanick may dispose of his goods, or pack them up in trunks, and remove to another clime in the course of a few months; but you cannot shoulder your lands, or dispose of them when you please, it therefore behoves you to rouse up, and turn your most serious and critical attention to this Constitution. You are called upon by the legislature to appoint men to meet in Convention, to consider and decide upon the proposed Constitution. Seek, and make choice of such men as served you faithfully through the war, and know the difficulties and dangers of a revolution. No man is debared by our state constitution from sitting in this convention. And let each town, or district, qualified by law to send a member, give him instructions to insist upon the additions of a Bill of Rights to the Constitution, and to have such amendments made in it, as shall effectually secure it on all sides; it had better be done now, in the first setting out, than to have to do it seven years hence—it may be at the purchase of blood. 4.17.9

I think the state of Virginia have ordered their convention to object, amend, or make a new one as they please. I wish every state would do the same, then a continental convention would have a fair chance to frame a constitution most agreeable to the general sense of the people, and then let it be returned for their approbation. I assert as a fact, that the gentlemen had not a fair chance in forming this. They were shut up as it were, from the world, and could hardly converse with their intimate friends on the important subject, and they formed it on those generous and liberal principles agreeable to their own sentiments, and were they always to rule, I should not have much to fear from them. But I have some where read, that men in power ought above all others to be narrowly watched and checked on all sides, with restraints stronger than their temptations to break them, and even crimes of theirs ought to be more penal as it is evident they are more pernicious. 4.17.10

4.17.11 To conclude—as the Fox in the Fable, wanting to rob a hen-roost, or do some such like prank, humbly besought admittance and house room only for his head,—his whole body presently followed—. So courts more crafty as well as more craving than that designing animal, have scarce ever gained an inch of power, but they have stretched it to an ell; and when they have got in but a finger their whole train has soon followed.

A Farmer

II

1 February 1788

Messieurs Printers,

4.17.12 When a man enters the list of your correspondents, and publishes his sentiments to the world, with a design for the public good, I read him with candor; and like a bee on the flower, extract the most useful parts; and if for want of information, or a slip of the pen, he should publish any thing not quite so agreeable, I had rather cast a vail over it than any thing else.—But when a man (like Alfredus)[7] enters for the sake of criticizing upon a few words, and snarling at every sentence, because they are not entirely agreeable to his wish, I generally treat him, as I do the Puppy, which barks with a great deal of impudence, at every traveller; and with the good humor of Uncle Tobey, I say to him, go, Poor Devil, Go, return to thy cell, there is room enough in this world for both of us.

4.17.13 I wish young gentlemen, would not be quite so anxious, to crowd down this Constitution. If they are not Quacks in Law, Physick, or Speculation, they may be in politicks: But, leave it to old and experienced hands to decide, who can look to the end of things.[8] It calls to my mind, an observation made in a grand council held at New-York, when our army was about evacuating the city; it was warmly urged to set fire to the city, as it might prove a temporary advantage to the British troops; after some altercation, an old sage arose and addressed himself as follows: I am surprised to hear the sentiments of so many wise and worthy gentlemen, to burn the city of New-York, that has cost so much time and treasure to erect. But however, war has not ripened your minds to that maturity which is necessary to look to the end of things. If we burn the city, how many hundreds of worthy inhabitants shall we distress and many wholly ruin, who have only left the city to escape the dangers of war, and perhaps may return again in a few months. If the British troops burn it let them take the curses of an innocent people: for my part I can see no more reason, for burning the city, than that a wealthy farmer should burn his Barns, because the rats have got into them. And on my part, I can see no more reason for adopting the Constitu-

tion as it now stands, upon the General conversation, that if we dont adopt this we shall never have any, than that a man should quit his house, and expose himself, and his family to the inclemency of the weather, because his house may take fire, in the night, and burn them up.

As to the lofty strains of a Wilson,[9] he has never entered into the spirit of the Constitution, so far as has come to my knowledge, he has in my opinion, kept aloof, on the surface, and with a great deal of falacy set forth the difficulties that attended forming the Constitution; those difficulties, will always arise where the views are not intended for the general good. 4.17.14

But let Mr. Wilson, and his lofty strains, go off, with a puff of wind, and soar above the clouds in an Air Balloon, he seems better calculated for that region than to make laws for a free people.

There is the nervous reasonings of a Brutus, and the ingenious sentiments of a Candidus;[10] they have opened the sore and probed it to the bottom; if any man, after reading their strictures upon the Constitution, can lay his hand upon his heart, and say it is best for us to adopt it, I shall in return pronounce, that he ought to be a slave forever, and will freely doom him to the cold and dreary regions of Nova-Scotia, there to wind up his days on clams and potatoes. 4.17.15

My friends and fellow farmers, I intended here to have made an end, and left Alfredus, with all his impudence to return peaceably to his cell, where I sent him in the first paragraph—But when I came to read over his piece a second time couched in such language, it made me shudder to see how abusively he has treated our juries, the grand palladium of liberty. I will for your observation copy his sentiment, it appears to be written with blood. These are his words—"*What are the advantages of this* boasted Trial by Jury, *and on which side do they lie, not certainly on the side of justice, for one unprincipled juror, secured in the interest of the opposite party, will frequently divert her course, and in four cases out of five, when injustice is done, it is by the ignorance or knavery of the jury.*"[11]—This is a bold stroke, my friends, and shows you at once the disposition of Mr. Alfredus, that he is no friend to your liberties. I shall make no further observation on this particular, but when a leisure hour offers, I will give him a further combing for his insolence to the juries.[12] Then we may see who wants the medicine to cure the *Hypocondriac*. In the mean time I shall advise Mr. Alfredus to examine his Apothecaries shop and take a little *Hypocacuana* and a few pills for fear he should get past recovery. 4.17.16

As to armies, I shall conclude with a quotation from a celebrated author, viz. "In free states, the profession of a soldier taken merely, and singly as a profession, is justly an object of jealousy, and an army though they are voted yearly, soon get engrafted to, and become a part of the Constitution.["]"[13] 4.17.17

A Farmer

III
6 June 1788

Messirs. Lamson and Ranlet,

4.17.18 When I sent you the last piece to be published, under the signature of the FARMER, in which I gently advised Mr. Alfredus to take a little Ipecacuanha, and a few pills to cure him of the Hypochondriack—I had no idea of his taking so large a dose. It evidently appears, by his conduct, that the disorder had taken very deep hold of him, otherwise he never would have taken so large a portion at once; for, to appearance, if he had swallowed the whole of an apothecarie's shop, it would not have operated more violently, nor have discharged more filth than he did in his last publication. But so it is—We will consider it as a wonderful phenomenon perhaps, suited to attract the notice and observation of the Medical Society at their next meeting. However, it is the duty of an able Physician to watch carefully the ebbings and flowings of nature; and when a patient has received so violent a shock to throw in a few Lenitives, which, it may be hoped, will in a short time recover him to *compos mentis et corporis* to be of sound mind and body, and so make him an useful member of the community. I shall therefore, rather pity than complain of, Alfredus, while he is under the severe operation of medicine; for he appears to be conscious that he deserves the curses of Ernulphus, by expecting them; and as conscience has begun to do its office, I shall leave that monitor to compleat it, and proceed to make a few remarks on his performance.

4.17.19 He observed that "old heads are not always wise;" he should also have recollected that young heads are not always steady and judicious; if they had have been, he never would have complained of my using him ill with regard to language; for when I published my sentiments they were open to the strictures of any person. But Mr. Alfredus being conscious that my observations were founded upon reason and fact; and a *Truth* is a hard thing to get over, he begins by ridiculing the Author under the character of Don Quixot, and then abusing and vilifying our juries (which I shall say more of presently) and finally concludes by saying, "To follow this writer, Messieurs Printers, through every scandalous innuendo, foolish proposition, impertinent observation, and groundless assertion, would fatigue the patience of your readers." This gentleman ought to have pointed out here to the public the groundlessness and falsehood of my assertions, and shown by facts well attested, that Congress had never been lavish of public money or given in any instance exorbitant salaries to any of her servants, had he done this it would have been to the purpose, he might have drawn his conclusions, as he does, but instead of this, without the least shadow of proof, he lumped the whole together as false and groundless assertions, wherein it appears he is really himself chargeable with the same impertinence, folly and falsehood he unreasonably charged me with.

Information and instruction is the grand design in writing for the public, and where these are neglected by an Author, and he descends to low banter and scurrility, or to bold, impudent negations, or positive dogmatical assertions instead of reason and argument, as Alfredus did in his first publication, and more especially in his last, he deserves to be despised, or rather to use his own simile, "to have the musket he has overloaded burst upon him with horrible recoil." Mr. Alfredus should have considered this when he was charging so high, and if by accident, in going off she sent him back to his cell, with all his impudence, he ought to have born it patiently, and considered that he himself was *the moving cause*. 4.17.20

I shall now make some observations on the unjust and illiberal sarcasms, passed by Mr. Alfredus, on our jurors:—And, as he has such a peculiar nack of leaping over important things, by saying "they are nothing to the purpose," or by stigmatizing them, "as impertinent observations, groundless assertions," etc. I shall copy his own words, and then follow, with the sentiments of the Hon. Justice Blackstone, who is one of the most celebrated Authors now extant. 4.17.21

Sir, in your publication of Friday, January 18th, ult. you say, "What are the advantages of this boasted trial by jury, and on which side do they lie? *Not certainly on the side of justice,* for one unprincipled juror, secured in the interest of the opposite party, will frequently divert her course, and in four cases out of five where injustice is done, it is by *the ignorance or knavery of the jury*." This, I may venture to affirm, is an impudent and bold stroke; it attacks the whole community at once, and has a tendency to sap and undermine the best preservative of liberty, and therefore ought to be held in abhorrence by every freeman; it is totally repugnant to the sense of the best writers on the subject, and especially to the ideas of the renowned author above mentioned, whose sentiments I shall now quote, vol. 3, page 378.[14] "*When the jury have delivered in their verdict, and it is recorded in court, that ends the trial by jury; a trial which besides the other vast advantages which we have occasionally observed in its progress, is also as expeditious and cheap as it is convenient, equitable and certain: upon these accounts—the trial by jury has been, and I trust ever will be looked upon as the glory of the English law; and if it has so great an advantage over individuals in regulating civil property, how much must that advantage be heightened, when it is applied* to criminal cases; *it is the most transendant privilege which any subject can enjoy or wish for; he cannot be affected either in his property, his liberty or his person, but by the unanimous consent of twelve of his neighbours and equals; a Constitution that I may venture to affirm has, under Providence, secured the just liberties of the English nation for a long succession of ages; and therefore a celebrated French writer (Montesque) who concludes, that because Rome, Sparta, and Carthage have lost their liberties, therefore those of England in time must perish, should have recollected that Rome, Sparta and Carthage, at the time when their liberties were lost, were strangers to the trial by jury.* 4.17.22

4.17.23 *Great as this eulogium may seem, it is no more than this admirable Constitution, when traced to its principles, will be found, in sober reason, to deserve. The impartial administration of justice, which secures both our persons and properties, is the great end of civil society; but if that be entirely entrusted to the magistracy of a select body of men, and those generally selected by the Prince, or those who enjoy the highest offices in the state, their decision, in spite of their own natural integrity, will have frequently an involuntary bias toward those of their own rank and dignity; here therefore, a competent number of sensible and upright jurymen, chosen by lot from among those of the middle rank, will be found the best investigators of truth, and the surest guardians of public justice; for the most powerful individual in the state, will be cautious of committing any flagrant invasion of another's right, when he knows that the fact of his oppression, must be examined, and decided by twelve indifferent men, not appointed till near the hour of trial: and that, when once the fact is ascertained, the law must of course redress it—This therefore preserves, in the hands of the people, that share which they ought to have, in the administration of public justice; and prevents the encroachments of the more powerful and wealthy citizens.*

4.17.24 *Every new tribunal erected for the decision of facts, without the intervention of a jury, whether composed of justices of the peace; commissioners of the revenue; judges of a court of conscience; or any other standing magistrate, is a step towards establishing aristocracy, the most oppressive of absolute government. It is, therefore, upon the whole, the duty which every man owes to his country, his friends, his posterity, and himself, to maintain to the utmost of his power, this valuable Constitution in all its rights, and above all to guard with the most jealous circumspection against the introduction of new, and arbitrary methods of trial, which, under a variety of plausible pretences, may in time, imperceptibly undermine this best preservative of LIBERTY,*''—Added to this, there is a late law of this state, which puts the pay, and travel of our jurors upon a very respectable footing—And lest Mr. Alfredus should say, this is nothing to the purpose, because the trial, by jury, under the English Constitution, may be very different from what it is in ours,—I will just mention, wherein they differ, under the English Constitution,—The jurors are returned by the sheriff.—under ours they are draughted by lot, from each town, which, I think, is the most equitable method, and as to the modes of process through the trials, they are nearly the same, both endeavour to do justice to the parties.[15]

4.17.25 To conclude, Mr. Alfredus, I will give you a word of advice—Do you, in future, attend the business that God and nature has formed you for and placed you in, for you make a much more respectable appearance *there* than you do in writing for a free people,—and should the proposed Constitution take place, let us see who will make the best member of it.

The Farmer.

1. James Wilson, "Address to the Citizens of Philadelphia," 6 October 1788, McMaster and Stone 143–44; see references in Federal Farmer IV, 2.8.50 n. 39.

2. See Crosskey, *Politics and the Constitution* 968–71.

3. A Farmer thus accepts the general view at this time that freedom of the press meant a prohibition against prior restraint. See McMaster and Stone 308 (Wilson).

4. In this elaboration of the ground for the opposition to any but defensive war, A Farmer indicates the deeper issues behind the disagreement of Brutus and Publius. See Brutus VII, 2.9.86 n. 59.

5. The exchanges between Alfredus and A Farmer that are not printed here deal principally with the nature of Colonel Cogswell's military service. See *Freeman's Oracle* 13 June, 4 July, 11 July, 16 August, 23 August.

6. About a six-fold increase according to a report of a committee consisting of James Madison, Oliver Ellsworth, and Alexander Hamilton accompanying a resolution on a congressional impost, on 18 April 1883, £1 = $4.44. *Journals of Continental Congress* XXIV, 287. See McDonald, *We the People* 385. See also Mason 2.2.5 n. 3.

7. Alfredus replied to the first essay of A Farmer in the *Freeman's Oracle* of 18 January 1788.

8. In his next essay, Alfredus replied to the charge here by inquiring, "Is all knowledge confined in grey heads? Was not Hercules competent to manly deeds even in his cradle? And have not some gentlemen of *twenty* more sagacity and skill in the sciences of polity and government than others who have grown hoary in public business?" "Old heads are not always the repositories of wisdom, nor do 'Young Gentlemen' always deserve the contempt in which you affect to hold them." New Hampshire *Freeman's Oracle* 8 February 1788. For A Famer's final rebuttal, see 4.17.18–20.

As Charles Warren, among others, has pointed out, the controversy over the Constitution was in some respects a controversy between generations, the young nationalists against the old revolutionaries. Massachusetts Historical Society, *Proceedings* 64 (1932): 145–46. See also Stanley Elkins and Eric McKitrick, "The Founding Fathers: Young Men of the Revolution," *Political Science Quarterly* 76 (June 1961): 181–216. Cf. [Maryland] Farmer II, 5.1.19 n. 13.

9. A substantial portion of Alfredus' original reply had consisted of a quotation from James Wilson on the Bill of Rights. He quoted, not from the 6 October "Address to the Citizens of Philadelphia," to which A Farmer referred in his first essay, but from a speech of Wilson in the Pennsylvania ratifying convention on 28 November 1787. In this speech Wilson gives an argument in defense of the absence of a Bill of Rights that is different from and not altogether consistent with the one in the 6 October speech. In the earlier speech he had argued that in the case of the state governments "everything which is not reserved is given; but in the [case of the federal government] the reverse of the proposition prevails, and everything which is not given is reserved" (McMaster and Stone 143). But in the convention speech he argued much more broadly that the necessary implication of any constitution of civil government is that anything not given is reserved, that there is no necessity of explicit reservation, that in fact many of the states have no bill of rights, and that a bill of rights is not only unnecessary but may be dangerous in implying that what was not expressly reserved was meant to be given. Alfredus apparently quotes from the version of Wilson's speech printed in the *Pennsylvania Herald* 12 December 1787, and reprinted in McMaster and Stone 252–54. (A different report of the same speech is given in Elliot II, 434–37). See Federal Farmer IV, 2.8.50 nn. 38–40.

10. See 2.9, 4.9.

11. Alfredus goes on: "The fact is that under the present regulation, which most unreasonably (at least in civil cases) requires an unanimity in the verdict, juries favor the guilty much more than the innocent party." 18 January. See Old Whig III, 3.3.16 n. 17.

12. See 4.17.22–24.

13. The source of this quotation has not been found. Alfredus had contended, among other things, that the Constitution does not provide for a standing army, which he defines as "that which the supreme executive magistrate can raise by his own authority and support by permanent revenues beyond the controul of his subjects."

Regarding A Farmer's quotation, Alfredus replies in his essay of 8 February 1788: "Observe, Sir, where the force of the expression lies—'The profession of a soldier, *taken merely and singly as a profession* is justly an object of jealousy.' When considered as a security against inimical powers situated in the vicinity, the case is entirely different. While the present State of hostility between neighboring nations continues, troops will ever be necessary for the defence of frontier settlements, dock-yards, sea-ports, etc. Whatever may *possibly* be the consequence of annually voting such an army as these compose, the public security requires and will warrant our investing Congress with authority to do it. There is but one circumstance that can ever necessitate any other standing groups in times of peace, and that is the opposition that factious and licentious subjects will make to the execution of a firm and energetic government, when inconsistent with their interests and views."

14. The reference is correct and the quotation is substantially accurate, although A Farmer omits some words and phrases (e.g. the passage in Blackstone ends, "of English liberty," rather than "of liberty," as A Farmer has it).

15. Alfredus continues his criticism of trial by jury in the *Freeman's Journal* of 13 June, contending that the original purpose of the trial by jury, to stand between the powerful barons and the defenseless vassals, no longer exists in our governments. Trial by jury is nevertheless an eligible mode of trial in criminal and some civil cases, but it should be judged by actual results, the tendency of which is to give an advantage to the defendant. "If the design of judiciary courts is to protect guilt, or in better terms, to give the transgressor every chance to escape punishment, then some modes of trial as facilitate this impunity are just and right.—But if the strict and impartial administration of justice is the only object of their establishment, then such modes must be extremely faulty."

Charles Turner
Speeches in the Massachusetts Ratifying Convention

17 January and 6 February 1788

Charles Turner is described by Samuel Bannister Harding as "unquestionably the ablest and most dignified, as well as one of the most sincere, opponents of the new government."[1] Although both of these speeches from the Massachusetts ratifying convention are short, and although the latter explains Turner's vote *for* the Constitution, they provide an unusually clear view into the heart of the Anti-Federalist argument.

In the first speech (4.18.1) Turner argues against granting to Congress powers that may be abused, particularly the power to alter the place of choosing federal representatives. He denies that Congress can be trusted with wide powers on the assumption that it will be composed of sober and upright men. He contends, in fact, that there has been a moral deterioration in the country, arising from the operation of paper money and privateering, and that, while this increases the need for efficient government, the governors must be taken from the corrupt mass and will be further corrupted by their elevation. Turner's solution, to give no power that can be abused, is clearly at best a mitigation.

Turner presses more deeply into the problem of genuine self-government and the kind of leadership it requires in his second speech (4.18.2). He voted in favor of the Constitution (with amendments to be recommended) because of the vital and immediate need of efficient government; but he argues that the Constitution will not save the country from slavery and ruin without the prevalence of Christian piety and morals. He hopes that the new government will promote religion and moral principles and thus render the people more capable of being a law unto themselves, a far nobler task than building more and more rigorous governments to control a more and more turbulent and unjust people.

The speeches are taken from the contemporary publication of the Massachusetts debates.[2]

1. *Contest over Ratification* 66.
2. *Debates, Resolutions and other Proceedings, of the Convention of the Com-*

monwealth of Massachusetts, Convened at Boston, on the 9th of January, 1788, and continued until the 7th of February following, for the purpose of assenting to and ratifying the Constitution recommended by the Grand Federal Convention (Boston 1788).

17 January 1788

4.18.1 Mr. President, I am pleased with the ingenuity of some gentlemen in defence of this section [Art. I, sec. 4]. I am so impressed with the love of our liberty so dearly bought, that I heartily acquiesce in compulsory laws, for the people ought to be obliged to attend to their interest. But I do not wish to give Congress a power which they can abuse; and, I wish to know whether such a power is not contained in this section? I think it is. I now proceed, sir, to the consideration of an idea, that Congress may alter the place for chusing representatives in the general Congress—they may order that it may be at the extremity of a state, and by their influence, may there prevail that persons may be chosen, who otherwise would not; by reason that a part of the qualified voters in part of the state would be so incommoded thereby, as to be debarred from their right as much as if they were bound at home. If so, such a circumstance would militate against the constitution, which allows every man to vote. Altering the *place* will put it so far in the power of Congress, as that the representatives chosen will not be the true and genuine representatives of the people, but creatures of the Congress; and so far as they are so, so far are the people deprived of their rights, and the choice will be made in an irregular and unconstitutional manner. When this alteration is made by Congress—may we not suppose whose re-election will be provided for? Would it not be for those who were chosen before? The great law of self preservation will prevail. It is true, they might, one time in an hundred, provide for a friend, but most commonly for themselves. But, however honourable the convention may be who proposed this article, I think it is a genuine power for Congress to perpetuate themselves—a power that cannot be unexceptionably exercised in any case whatever:—Knowing the numerous arts, that designing men are prone to, to secure their election, and perpetuate themselves, it is my hearty wish that a rotation may be provided for. I respect and revere the convention who proposed this constitution. In order that the power given to Congress may be more palatable, some gentlemen are pleased to hold up the idea, that we may be blessed with sober, solid, upright men in Congress. I wish that we may be favoured with such rulers; but I fear they will not all, if most be the best moral or political characters. It gives me pain, and I believe it gives pain to others, thus to characterize the country in which I was born. I will endeavour to guard against any injurious reflections against my fellow citizens. But they must

have their true characters, and if I represent them wrong, I am willing to make concessions. I think that the operation of paper money, and the practice of privateering, have produced a gradual decay of morals—introduced pride—ambition—envy—lust of power—produced a decay of patriotism, and the love of commutative justice; and I am apprehensive these are the invariable concomitants of the luxury, in which we are unblessedly involved, almost to our total destruction. In the lower ranks of people, luxury and avarice operate to the want of publick duty and the payment of debts. These demonstrate the necessity of an energetick government: As people become more luxurious, they become more incapacitated of governing themselves. And are we not so? A like people, a like prince: But suppose it should so happen, that the administrators of this constitution should be preferable to the corrupt mass of the people, in point of manners, morals, and rectitude; power will give a keen edge to the principles I have mentioned. Ought we not, then, to put all checks and controuls on governours for the publick safety: therefore, instead of giving Congress powers they *may* not abuse; we ought to withhold our hands from granting such, as *must* be abused if exercised. This is a general observation.[1] But to the point: At the time of the restoration, the people of England were so vexed, harrassed and worn down, by the *anarchical* and confused state of the nation, owing to the commonwealth not being well digested, that they took an opposite career; they ran mad with loyalty, and would have given Charles any thing he could have asked—Pardon me, sir, if I say I feel the want of an energetick government, and the dangers to which this dear country is reduced, as much as any citizen of the United States; but I cannot prevail on myself to adopt a government, which wears the face of power, without examining it. Relinquishing an *hair's breadth* in a constitution is a great deal; for by small degrees has liberty in all nations, been wrested from the hands of the people. I know great powers are necessary to be given to Congress, but I wish they may be well guarded.

5 February 1788

Mr. President,—Being advanced in life, and having endeavoured, I hope, with a faithful attention according to my ability, to assist my country in their trying difficulties and dangers, for more than twenty years; and as for three weeks past my state of health has been such as to render me unable to speak in this assembly, I trust I shall be heard with some indulgence while I express a few sentiments at this SOLEMN CRISIS. I have been averse to the reception of this Constitution while it was considered *merely* in its original form: But since the Hon. Convention have been pleased to agree to the recommendation of certain amendments, I acknowledge my mind is rec- 4.18.2

onciled. But even *thus* amended, I still see, or *think* I see several imperfections in it, and *some* which give me *pain*. Indeed, I never expect to see a Constitution free from imperfections; and considering the *great* diversity of local interests, views and habits; considering the *unparalleled* variety of sentiments among the citizens of the United States, I despair of obtaining a more perfect Constitution than this *at present*. And a Constitution preferable to the confederation must be obtained, and obtained *soon*, or we shall be an *undone* people. In my judgment there is a *rational probability*, a *moral certainty*, that the proposed amendments will meet the approbation of the several States in the Union. If there is any respect due to the *hoary* head of Massachusetts, it will undoubtedly have its proper influence in this case. The minds of gentlemen throughout the nation, *must* be impressed with *such* a sense of the necessity of *all important* UNION, especially in our present circumstances, as must strongly operate in favour of a concurrence. The proposed amendments are of such a *liberal*, such a *generous*, such a *catholic nature* and *complexion*, they are so *congenial* to the soul of every man who is possessed of a patriotick regard to the preservation of the just rights and immunities of his country, as well as to the institution of a good and necessary government, that I think they *must*, they *will* be UNIVERSALLY *accepted*. When in connection with this confidence I consider the *deplorable* state of our NAVIGATION and COMMERCE, and various branches of business thereon dependent, the *inglorious* and *provoking* figure we make in the eyes of our European creditors, the *degree* in which the landed interest is burdened and depreciated, the tendency of depreciating paper and tender acts, to destroy mutual confidence, faith and credit, to prevent the circulation of specie, and to overspread the land with an inundation, a chaos of multiform injustice, oppression and *knavery;* when I consider *that* want of *efficiency* there is in our government, as to obliging people seasonably to pay their dues to the public, instead of spending their money in support of *luxury* and *extravagance*, of consequence the inability of government to satisfy the just demands of its creditors, and to do it in *season*, so as to prevent their suffering *amazingly* by depreciation; in connection with my anxious desires that my ears may be no longer *perstringed*, nor my heart *pained* with the cries of the injured, suffering WIDOW, and ORPHAN; when I also consider *that* state of our finances which daily exposes us to become a prey to the despotick humour even of an impotent invader, I find myself constrained to say, before this Assembly, and before GOD, that I think it my duty, to give my vote in favour of this Constitution, with the proposed amendments; and unless some further light shall be thrown in my way to influence my opinion, I shall conduct accordingly. I know not whether this Convention will vote a ratification of this Constitution, or not. If they should do it, and have the concurrence of the other States, may that GOD, who has always in a remarkable *manner* watched over us and our fathers for good, in all difficulties, dangers and distresses, be pleased to

command his Almighty Blessing upon it, and make it instrumental of restoring justice, honour, safety, support and salvation to a *sinking land*. But I hope it will be considered by persons of all orders, ranks and ages, that without the prevalence of *Christian piety, and morals*, the best republican Constitution can never save us from slavery and ruin.[2] If vice is predominant, it is to be feared we shall have rulers whose grand object will be (slyly evading the spirit of the Constitution) to enrich and aggrandize themselves and their connections, to the injury and oppression of the *laborious* part of the community; while it follows from the *moral constitution* of the DEITY, that prevalent iniquity must be the *ruin* of any people. The world of mankind have always in general, been enslaved and miserable, and always will be until there is a greater prevalence of Christian moral principles; nor have I an expectation of this, in any *great* degree, unless some superiour mode of *education* shall be adopted. It is EDUCATION which almost entirely forms the character, the freedom or slavery, the happiness or misery of the world.[3] And if this Constitution shall be adopted, I hope the Continental Legislature will have the *singular honour*, the *indelible glory*, of making it one of their *first* acts, in their *first* session, most *earnestly* to recommend to the several States in the Union, the institution of such means of education, as shall be *adequate* to the *divine, patriotick purpose* of training up the children and youth at large, in that solid learning, and in those pious and moral principles, which are the *support*, the *life* and SOUL of the republican government and liberty, of which a free Constitution is the body; for as the body without the spirit is dead, so a free form of government without the *animating* principles of piety and virtue, is dead also, being alone. May *religion*, with sanctity of morals prevail and *increase*, that the patriotic civilian and ruler may have the *sublime, parental* satisfaction of *eagerly* embracing every opportunity of mitigating the rigours of government, in proportion to that increase of morality which may render the people more capable of being *a law to themselves*. How *much* more blessed THIS, than to be employed in fabricating Constitutions of an higher tone in obedience to necessity, arising from an increase of turbulent vice and injustice in society. I believe your Excellency's patience will not be further exercised, by hearing the sound of my voice on the occasion, when I have said; may the *United States of America* live before GOD! May they be enlightened, pious, virtuous, free and happy *to all generations!*

1. The notes kept by Chief Justice Parsons of this part of the speech are probably more accurate: . . . He thinks a rotation is necessary in the lower house to guard against the deep arts of popular men; has well grounded fears that some of the rulers would be bad men—we must therefore guard against them; that paper money and privateering has introduced corruption and immorality, and a disregard to private and public justice. In consequence of that corruption, it requires a more energetic Federal government; but the rulers will be taken out of this corrupt mass. *Like prince like people*, and promotion will increase the corruption. Every possible guard must be devised, therefore, against rulers; therefore, Congress must not have the power in the

fourth section, because they cannot use it without abusing it." "Minutes kept by Chief Justice Parsons, of the Debates in Convention," *Debates and Proceedings in the Convention of the Commonwealth of Massachusetts* . . . (Boston 1856) 295 (notes of Mr. Turner's speech of 17 January 1788). On reliance on good men see Federal Farmer VIII, 2.8.110 n. 72; on the relation between the character of the people and their laws see ibid. III, 2.8.24 n. 19.

2. For other Anti-Federalist dicussions of the need for religion, see Aristocrotis 3.16.14–15 n. 9; Samuel 4.14.7; Customer 4.16.1; Friend to the Rights of the People 4.23.3(9); David 4.24.1; Proposal for Reviving Christian Religion 5.8.3; Denatus 5.18.10; Warren 6.14.135–40. For Federalist replies, see David 4.24.1 n. 1. Cf. *The Federalist* no. 10, 61; Madison to Jefferson, 24 October 1787, Madison, *Writings* (ed. Hunt) II, 17–41.

3. See Denatus 5.18.9–12.

Letter from The Yeomanry of Massachusetts

MASSACHUSETTS GAZETTE
25 January 1788

This typical Massachusetts assault on the "aristocratic party" contains a defense of Elbridge Gerry and is notable for its attack on Washington as a slaveholder.

Mr. Allen,

Please to insert the following in your FREE PAPER, and you will oblige a number of free born people.

To the Publick.

Many are the arts made use of by our aristocratick gentlemen, to accommodate the federal constitution to the taste of the yeomanry of the country. But it is very unlucky for them, that they should be so far misled, as to attempt to trump up *one* thing which appears by no means to be founded in truth, viz. that none but placemen and pensioners are opposed to it.[1] This is so far from quadrating with truth, that we conceive it to be an absolute falshood. We would ask the disinterested part of the community just to look over the characters which are so fond of swallowing this creature, which exhibits all the pourtraits of an over-bearing aristocracy, and see if *they* are not chiefly composed of salary men and pensioners, and those who at least think themselves fair candidates for places of honour and emolument, whenever the aristocratick wheels of the federal chariot shall be set in motion. 4.19.1

When we see the adherents to this constitution chiefly made up of civil and ecclesiastical gown men, and their dependents, the expedient they have hit upon is not likely to have the intended effect. There are many men destitute of eloquence, yet they can see and hear—They can think and judge, and are therefore not likely to be wheedled out of their senses by the 4.19.2

sophistical reasonings of all the advocates for this new constitution in the country combined. We know this is not true; and as we well know the design of such representations, we would have those gentlemen know, that it will not take. They must pull upon some other string, or they must fail. Another thing they tell us, that the constitution must be good, from the characters which composed the Convention that framed it.[2] It is graced with the names of a Washington and a Franklin. Illustrious names, we allow—worthy characters in civil society. Yet we cannot suppose them, to be infallible guides, neither yet that a man must necessarily incur guilt to himself merely by dissenting from them in opinion.

4.19.3 We cannot think the noble general, has the same ideas with ourselves, with regard to the rules of right and wrong. We cannot think, he acts a very consistent part, or did through the whole of the contest with Great Britain: who, notwithstanding he wielded the sword in defence of American liberty, yet at the same time was, and is to this day, living upon the labours of several hundreds of miserable Africans, as free born as himself; and some of them very likely descended from parents who, in point of property and dignity in their own country, might cope with any man in America. We do not conceive we are to be overborne by the weight of any names, however revered. "ALL MEN ARE BORN FREE AND EQUAL;" if so, every man hath a natural and unalienable right to his own opinion, and, for asserting this right, ought not to be stigmatized with the epithets of tenacious and dogmatical. If we were to pin our faith on any sleeves but our own (without derogating in the least from the merit of any one of the Massachusetts delegates in the federal convention) we should be as likely to pin it on the sleve of the hon. mr. Gerry as any one of them.[3] But we mean to see with our own eyes, and thus seeing to act for ourselves. In this view, as a tribute due from us to that hon. gentleman, we must acknowledge his tenderness, his care for the preservation of the liberties of the people, and his desire on all occasions to preserve them from invasion. This hon. gentleman was one who assisted in rearing the pillars of a republican government, he has ever since aided in the support of them, and thus hath acted a much more consistent part than those his brethren, who, after all the expense and fatigue of rearing the building, are now for razing the foundations, destroying instead of repairing the frame, and erecting another, which by no means can answer the good purpose of sheltering the people from storms. But, to lay aside metaphor—

4.19.4 This gentleman is much more consistent, than those who are for turning our republican government into a hateful aristocracy. And we must think it very dishonourable in the aristocratical party, to treat the worthy gentleman, in the manner they have done in the publick papers: We can assure them it has been far from helping their cause. We do not wish to tire the publick, but would hint to those gentlemen, who would rob the people of their liberties, that their sophistry is not like to produce the effect. We are willing to have a federal constitution. We are willing another trial should be

made; this may be done without derogating from the gentlemen, who composed the late convention. In framing a constitution for this commonwealth, two trials were made before one would stick. We are willing to relinquish so much, as to have a firm, energetick government, and this we are sensible may be done, without becoming slaves, to the capricious fancies of any sett of men whatever. It is argued, that there is no danger that the proposed rulers will be disposed to exercise any powers that this constitution puts into their hands, which may enable them to deprive the people of their liberties. But in case, say they, they should make such attempts, the people may, and will rise to arms and prevent it;[4] in answer to which, we have only to say, we have had enough of fighting in the late war, and think it more eligible, to keep our liberties in our own hands, whilst it is in our power thus to do, than to place them in the hands of fallible men, like ourselves, who may if they please, entirely deprive us of them, and so we be at last reduced to the sad alternative of losing them forever, or recovering them back by the point of the sword. The aristocratick party are sensible, that these are the sentiments of the majority of the community, and their conduct plainly evinces the truth, of a well known ancient adage—"*Nothing cuts like the truth.*"

The Yeomanry of Massachusetts.

1. On this widespread claim, see Martin 2.4.118 n. 44.
2. See Federal Republican 3.6.4 n. 4.
3. See above 2.1. For other criticisms of Washington, see Centinel I, 2.7.5 n. 2; on slavery see Martin 2.4.65 n. 24.
4. This was a very common Federalist argument. See Federal Farmer X, 2.8.127 n. 80.

Essay by An American

(BOSTON) AMERICAN HERALD
28 January 1788

In another attack on Washington, An American interprets Washington's letter to Charles Carter to imply that the Constitution will be imposed by force.

4.20.1 We have been frequently advertised in the public papers, that General Washington, when he set his hand to the proposed Constitution, uttered these words—"THIS IS, PERHAPS, THE LAST TIME THE AMERICANS WILL HAVE AN OPPORTUNITY, COOLLY, TO SET DOWN, AND AGREE UPON A FORM OF GOVERNMENT."[1] The mode of expression from a Soldier,—from a Man, who, besides the CINCINNATI, could call out many followers—from a Man, who stands in the public eye, the sole candidate for Chief Ruler of all the States: From such a one, it was as void of prudence as it was of foundation.—This has alarmed many patriots, and given pain to many of his friends—but they all feel a respectful delicacy towards that Great Man, and have therefore been silent, while they might have observed, that, as the motion made by Virginia for a General Convention, was so readily agreed to by all the States; and that as the people were so very zealous for a good Federal Government, though this plan, which was aided in its birth by that Great Man, should fail, the people could again *set themselves down coolly, to make another*.—The mode of expression might have been animadverted upon. THE LAST TIME they would have an OPPORTUNITY!—From whom do they receive this OPPORTUNITY, but from Heaven?—And who shall withhold the boon?

4.20.2 Had not his letter appeared in the papers, fully explanatory of his ideas, still the regard all feel for him, might have constrained a decent silence.[2] In this letter he says, "MY DECIDED OPINION IS, THAT THERE IS NO ALTERNATIVE BETWEEN THE ADOPTION OF IT (that is the proposed Constitution) AND ANARCHY." One would suppose it very strange, that a Convention of fifty members, however respectable, should have such an opinion of their own

sagacity, that when they had performed a task *which they took upon themselves*, they supposed that three millions of people could not amend it, or wish an alteration! and that unless this identical System, with every letter and figure thereof should be adopted, all Government would be at an end, "Old Chaos would come back again, and nothing but anarchy ensue!"—No new Convention, no new set of men can ever agree again, why?—Because miracles have ceased.

But he goes on,—"IF ONE STATE, however important it may conceive itself to be, or a minority of them, should suppose, that they can dictate a Constitution to the Union, unless they have the power of applying the ULTIMO RATIO, to good effect, they will find themselves deceived."—One expression more ought to be attended to, in order to find the General's meaning:—"GENERAL GOVERNMENT IS NOW SUSPENDED BY A THREAD—I MIGHT GO FURTHER, AND SAY, IT IS REALLY AT AN END."—The proposed Constitution, is by the recommendation of the Convention, to be in force when nine States shall ratify it; if seven or eight out of 13 agree to it, yet the old Confederation remains until the people agree upon another.—But General Washington tells us, that the General Government is at an end already, and that unless the New Plan is adopted, anarchy and confusion takes place, and that a minority, unless they can apply the Ultimo ratio with good effect, will find themselves deceived. I do by no means wish to put an uncandid construction upon this letter, but I cannot resist the conclusion, that the General has declared, that this Constitution shall be supported by the ULTIMO RATIO, that is by force. 4.20.3

What is a Tyranny, but a Government forced by the stronger upon the weaker?—How imprudent then must the General be to make these declarations?—Does our soil produce no more Washington's? Is there none left who would oppose the attempt to establish a Government by force?—Can we not call from the fields, the counters, the bar, and mechanics' shops, any more Generals?—Is our soil exhausted?—And does any one suppose that the Americans, like the Romans, will submit to an Army merely because they have conquered a foreign enemy? 4.20.4

The truth is that we cannot exist without a General Government, and that great thanks are due to the Convention for the plan they offer; but should the body of the people, or even a majority of the States, wish for alterations, before they ratify the work, surely they may be obtained without bloodshed, without the ULTIMO RATIO. And the majority with usual American candour, will yield to their brethren. 4.20.5

An American.

1. "Should the States reject this excellent Constitution, the probability is that an opportunity will never again offer to cancel another in peace—the next will be drawn in blood." *Pennsylvania Journal* 14 November 1787; *Massachusetts Centinel* 24 November 1787; *Massachusetts Gazette* 3 December 1787; *Boston Gazette* 3 December 1787, etc. Curtis, *Constitutional History* I, 672; Charles Warren, *The Making of*

the Constitution (Cambridge, Mass., 1937) 717. Warren points out that, since the remark is not given by Madison in his notes on the Convention, there is some doubt of its authenticity. See Cato II, 2.6.7 n. 4.

2. In a letter to Charles Carter, Washington wrote: "My decided opinion of the matter is that there is no alternative between the adoption of it and anarchy. If one State however important it may conceive itself to be should suppose, or a minority of the States, that they can dictate a Constitution to the Majority unless they have the power of administering to good effect, administering the *Ultema ratio* they will find themselves deceived. . . . General Government is now suspended by a thread. I might go farther and say it is really at an end, and what will be the consequence of a fruitless attempt to amend the one which is offered, before it is tried, or of the delay from the attempt, does not in my judgment need the gift of Prophecy to predict." *Documentary History of the Constitution* IV, 406–7. The meaning of the "ultema ratio" comment is not entirely clear, but it was taken by the Anti-Federalists, in the context of this letter, as a threat to impose the Constitution by force if necessary. While Washington complained of the unauthorized publication of this private letter, containing some hastily written "exceptionable language," James Madison thought it may have been of service, "notwithstanding the scandalous misinterpretations of it which have been attempted." See *Documentary History of the Constitution* IV, 440–41, 456, 465, 477–78, 517.

Letter from A Bostonian

(BOSTON) AMERICAN HERALD
4 February 1788

A Bostonian urges that judges should be excluded from the legislature. The constitution of a democracy requires simplicity and brevity, not the vagueness and ambiguity favored by the men of the law.

Mr. Powars,

While the hon. Convention are attending to amendments to the Constitution before them, it is presumable, they will not omit *one*, which, in my opinion, will tend to the greatest security of the liberty of the people—That an effectual barrier be made against the legislative and judicial departments being constituted in the same persons—I say *effectual*. In doing which, it will become evidently necessary, that the gentlemen of the law, who are expounders thereof in the judiciary department should be excluded from a seat in the legislative.—I need not explain the evil tendency which an union ever had, and ever will have: It has been acknowledged, I believe, the greatest defects in the Massachusetts Constitution, and while 99 out of 100 of its inhabitants acknowledge the reasonableness of this proposition, no wonder those gentlemen are so extremely anxious for the present adoption of this Constitution, knowing, that should it go out to the people, that this security would be the first object of their attention, and that an adjournment would have this effect. But, say the '*order,*' "shall we be divested of our privileges as citizens?"—Pray, why do not the Judges of the Judical Court, the State Attorney, the Judges of Probate complain? Is it not evident, that if it is thought expedient to prohibit those characters from a seat in the legislature, gentlemen who have stated salaries, and therefore cannot be thought to have that local interest in view that may reasonably be supposed the other branch of the same court have, that they also should be debarred?—Is it not contradictory to every precept of human wisdom and inconsistent in its nature, that the expounders of law, men whose fortune and dependence depend principally on its inaccuracy, its vague and ambiguous terms, its incomprehensibleness, should be the framers thereof?—I say no wonder those gentlemen are for swallowing it down in its present form, while they

4.21.1

naturally suppose they are conceived necessary agents in making laws to be the supreme law of the land, and at the same time harvesting in the Judicial department.—Business enough to be sure, stepping from one court to the other, within the circuit of a *court-yard,* while almost every civil action of considerable magnitude between citizens of different states, besides a multiplicity of other trials are to pass thro' their hands.—I say there are many alterations necessary to be made in the new Constitution before it will suit the people not only of Massachusetts but of New-England in general, but no one of so much consequence as the one proposed; for when the legislature of a nation are composed of men only, whose happiness depends on the simplicity and brevity as well as energy of the laws of their country, then may we expect to find a *code* suited to the genius of the people, and applicable to a republican government.—It is inconsistent to suppose, that the same laws substituted to a *monarchial,* or *aristocratical* government, should be adequate to the simple and comprehensive constitution of a *democracy*—I cannot but wish the Constitution to be adopted, with amendments; but, inasmuch as I conceive this Convention has no authority or power to make any, they will prove futile in Congress with respect to a ratification, as Congress has not power to take cognizance of them by the proposed Constitution.—If the Constitution is good, and cannot be amended for the better, then no injury can happen by delay, as its advocates will naturally increase, and its opponents diminish.

A Bostonian.

Address by A Watchman

WORCESTER MAGAZINE
February 1788

The essay of A Watchman is unusual in three respects. It is one of two significant Anti-Federalist essays from the western part of Massachusetts; it is explicitly democratic in its principles; and the author defends the government of Rhode Island. Written in the accents of the backcountry, the essay appeared in the *Worcester Magazine* for the first week of February 1788 (vol. 4, no. 19). A Watchman warns against the destruction of Massachusetts democracy by the aristocratic principles of the proposed Constitution. Of special interest among his list of objections (and not untypical) are the claims that liberty of conscience is not provided for and that the door is opened for Jews, Turks, and Heathen to enter public offices. Samuel Bannister Harding suggests that the essay "illustrates, probably, the effect of inflammatory articles, such as those by 'A Republican Federalist' and 'John deWitt,' upon the mind of the average farmer, and may be looked upon as representing the sentiments of the majority of the Antifederalists of that section."[1]

1. *Contest over Ratification* 35.

(The following was a few days since sent us for publication; as it is the first piece written in this county, against the Federal Constitution, that has been offered to us for publication, we think proper, in order to shew impartiality, to publish it, notwithstanding the author evidently appears to be much mistaken in some of his assertions.)

To the Citizens of the United States.

Men, Brethren, and Sisters,

Hearken! it is now a critical time with us, and a time in which we ought to be upon our watch, and upon our guard. Now is the time for us to look out; 4.22.1

now is the time for us to take care; now is the time for us to see that nothing is done to deprive us of our religious, or our civil liberties.

Our government at present is democratical, that is, the power is in the people; we are allowed to choose our rulers, make our own laws, and perform religious worship according to the dictates of our own consciences; and by our constitution a freedom of speech, and the liberty of the press, are allowed to every one of us. But although we are under such an excellent constitution, behold a new one is presented to us for our reception, which appears much like an aristocratical form; and will, if it is established, demolish a part of our democratical government, and deprive us of a part of our liberties.

4.22.2 Before we suffer this new constitution to be established, we ought to consider seriously what it contains, and whether it is calculated to promote our felicity? or whether, like a wolf in sheep's clothing, it is calculated to vest certain men with more power, deprive us of our liberties, and bring our land into lordships, and lead us into vassalage and slavery, like the poor people in Holland, who, after they had obtained their independency, lost their power, and were not suffered to have any voice in their government, no not so much as to choose their representatives.

4.22.3 How often has it been ringing in our ears from every quarter of the United States, that our present constitution is the best that ever was or ever could be established; if that be true, pray what need is there of an alteration—what need have we to alter a constitution that is every way perfect; if we should suffer our democratical government to be demolished, and an aristocratical one established, it is probable that in a few years some designing men will attempt to pull that down, and set up one that is monarchical, and so bring the country under a military government.

4.22.4 Permit me then, my beloved brethren and sisters, to point out wherein this new constitution is deficient.

1st. There is no bill of rights in it. 2d. Although different religions are allowed to set in Congress, yet there is no liberty given to the people to perform religious worship according to the dictates of their consciences. 3d. There is a door opened for the Jews, Turks, and Heathen to enter into publick office, and be seated at the head of the government of the United States. 4th. There is nothing said about the people being allowed the freedom of speech and the liberty of the press. 5th. It divides Congress into three branches, as President, Senate, and a house of Representatives, which will be a great clog to business, and a hindrance to the making of laws with expedition and dispatch. 6th. It deprives men that are endowed with the wisdom that is from above, from entering into Congress; unless they have arrived at a certain age, and have abode in the states a certain quantity of time. 7th. It augments the members of Congress, and makes the government more expensive. 8th. It deprives the people of the liberty of choosing their delegates to Congress annually, and of recalling them when they please. 9th.

It almost annihilates the state governments, and deprives their legislation of the power of making their own laws. 10th. It makes no provision against the keeping a standing army in a time of peace. 11th. It deprives the people of the power of levying and collecting their own taxes. 12th. It vests Congress with power to tax all the states, to send forth collectors, and enforce the payment of taxes by a standing army. 13th. It vests Congress with power to run the people into debt, by borrowing money of foreign nations, upon the credit of the United States; and it doth not oblige the members of that assembly to render any account of the expenditure of the same, if they shall see fit to secret it. 14th. No provision is made in it against having the civil power subject to the military, nor against having people that do not belong to an army or navy tried and punished by the military laws. 15th. It deprives the people in the several states of the liberty of making their own constitution, and vests it in the hands of Congress. 16th. It deprives the inhabitants of each state of the power of choosing their superiour and inferiour judges.

Thus have I exhibited some of the deficiencies in our new Constitution, perhaps more might be mentioned; but although there are some deficiencies, yet there are many excellent things that are worthy of our reception and establishment, providing our constitution is deficient. Some people are averse to a democratical government, because they esteem it to be the most expensive and irregular; but the governments of Connecticut and Rhodeisland have been such from their first settlement; they have chose their own officers, and made and executed their own laws, and where can we find cheaper and more regular governments than they have been? 4.22.5

Thus, my beloved friends, have I given you the foregoing hints, that you may be upon your guard, and ward off the impending danger. Keep the power in your own hands, and let nothing be established that may deprive you of your liberties and make you unhappy.

A Watchman.

A Friend to the Rights of the People
Anti-Fœderalist, No. I

and

A Friend of the Republic
Anti-Fœderalist, No. II

(NEW HAMPSHIRE) FREEMAN'S ORACLE
8 February 1788

The first of these two essays is addressed to the inhabitants of New Hampshire and the other to the New Hampshire ratifying convention. At least one of them seems to have been written by Thomas Cogswell, author of the essays of A [New Hampshire] Farmer. The reason for the different pseudonyms is probably the different audiences addressed rather than different writers, but it is quite possible that the essays were written by different men and that it was the printer who labeled them (what the opponents of the Constitution seldom called themselves) "Anti-Fœderalist I and II."[1]

The essays exhibit a typical Anti-Federalist distrust of political authority and fear of the corrupting effects of luxury and the taste for foreign manners, which the new Constitution encourages. Two points in the first essay are of particular interest. In discussing the powers of Congress, A Friend to the Rights of the People declaims warmly on the need for frugality, on the growth of luxury and European fashions that will be stimulated by the Constitution, and on the effects of the federal city, with its probable palace for the president, amphitheater, circus and assembly (4.23.3[3–4]). He criticizes the discarding of all religious tests and makes an emphatic if not profound defense of the civil utility of religion (4.23.3[9]). He also criticizes the excessively lengthy terms of office, the provision for congressional alteration of the times, manner and place of elections, the sanctioning of the slave trade, the President's powers of appointment, the extensive judicial power, and the provision for new states, which amounts to a guarantee by the rest of the states of New York's claims to Vermont.

The essay by A Friend to the Republic is shorter but similar in tone. The "republic" of which the author is a friend appears to be New Hampshire, the essay beginning with a warning that ratification of the Constitution will

amount to a surrender to Congress of all the liberties, privileges, and immunities of New Hampshire. The writer scorns James Wilson's explanation of the absence of a bill of rights, advises the delegates to read the writings of critics of the Constitution, and, in the most interesting passage in the essay (4.23.8), denies that such mighty talents are necessary for government as some claim. Plain honesty and common sense are sufficient; great abilities are more often than not employed to mislead the multitude and to deflect them from the "open and plain paths of public virtue and public good."

1. A Federalist writer, Alfredus, identifies Cogswell as the author of Anti-Federalist No. II (A Friend to the Republic), which is not denied. See the New Hampshire *Freeman's Oracle* 13 June 1788. However, the same hand that correctly identifies A [New Hampshire] Farmer as Thomas Cogswell on the pertinent American Antiquarian Society copies of the *Freeman's Oracle* also identifies Cogswell as the author of A Friend to the Rights of the People but not of A Friend to the Republic. See [New Hampshire] Farmer 4.17 intro. n. 1.

Anti-Federalist, No. I.

To the Inhabitants of New-Hampshire.

The grand topick of the day is the New-Constitution, much has been said for, much has been said against it by able writers—On one side, it is warmly asserted, that the liberties of the people, are sufficiently secure, as it now stands—On the other it is urged with equal vehemence, they are not, amendments must be made—a Bill of Rights prefixed, or we are undone; so that it is very difficult, for common people to know what is right, any thing that may serve to throw light upon the subject, may be very useful at this juncture. Both sides, it appears to me, so far as I have had opportunity of reading, have kept the Constitution too much out of view. There seems to be a necessity of a more particular and impartial examination of the thing itself, which is the bone of so much contention. 4.23.1

If the plan of Federal Government, proposed for our consideration and acceptance, is secure, and well expressed in all its branches, then it will appear so upon a candid explanation, and no man ought to oppose it; or say any thing privately or publickly to prejudice any person against it; no good citizen would, in so doing, he would manifest himself to be an enemy to this country and posterity; and would deservedly be dispised by all the virtuous part of the community.—But if there are a number of things insecure, and of dangerous tendency in the Constitution itself, they may be made to appear upon fair and faithful examination; and no wise man would wish to rest the vast weight of national government upon a sandy foundation, which may give way, and let the fair structure of liberty, erected at such an infinite 4.23.2

expence of blood and treasure, fall into ruins.—Certainly no good citizen would approve of such an establishment, nor could be recommend it to the choice and adoption of others; if he did he must counteract his own, and the general interest and all the benevolent sentiments of reason and humanity. It is therefore of vast importance that the constitution should be well considered, and carefully examined, for upon that and nothing else, rationally explained, according to the common usage of words, must we found our judgment of its goodness or badness;—My design therefore is to quote, and make some remarks upon some of the most capital propositions.

4.23.3 *Remark*, I. Upon the time for which Congress is to be chosen on the new plan, Art. 1. Sect. 2.—The house of Representatives shall be composed of members chosen every second year by the people of the several States—Sect. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for *six years*—Art. 2. Sect. 1. The executive power shall be vested in a President of the United States, he shall hold his office during the term of *four years*, and the Vice President shall be chosen for the *same term*. By this it plainly appears, that the Representatives of Congress are to hold their offices, for *two*, each of the Presidents for *four*, and the Senators for *six years successively*. This appears to me with not so favorable an aspect upon the liberties of the people, as if their session had been for a shorter term—Common sense teaches, that when public officers are chosen annually, or only for a short time at once; they naturally feel themselves more dependent upon the people, and consequently their obligations will be stronger to fidelity in their public trust—their fears will be alarmed on the one hand against maladministration, lest they be displaced at the next election—their hopes animated, on the other, to good conduct, in prospect of the approbation of their citizens, in a new choice; the people therefore have the strongest hold of their rulers, by having it in their power, soon to displace them upon malconduct; and consequently their liberties are more firmly established, by frequent elections than otherwise. It may be said here, that the longer men continue in office, the better they will be qualified for it, and consequently capable of doing more good. It may be so, and if they behave well, I would have them chosen again, and again, and so long as they approve themselves faithful to the public. But, on the supposition of their proving ill, the shorter their term in office the better—they will do much the least mischief to the community—and the chance of their proving ill, is at least as great, if not greater, than the contrary. There were more wicked kings in the nation of Israel, than good ones—and human nature is still the same, the bias to evil stronger than to good; the balance therefore preponderates against electing any persons for a long time together in any office; common prudence will teach us better. No wise man will contract with a menial servant for four or six years at once; he will chuse to engage him for a short term first, and if he proves faithful, he will renew the contract, if otherwise, he can easily dis-

card him. The case holds equally good, with the honorary servants of the state: Here therefore, were I to give my opinion, I would advise, that no person be chosen into any office in Congress, for more than one or at the most *two years* at a time.—We choose all our legislative body annually, our members of Congress have been chosen but for one year at a time; and in that, short as it is, they have taken some pretty large strides—What may we not expect, in treeble the term, furnished with such very extensive powers. The long parliament in England was one of the worst, that ever disgraced the annals of mankind—the truth is, power long continued, makes men giddy, turns the head, and heart too, many times. The most promising characters, at first, have proved the worst in less than six years. Nero was one of the best among the Roman Emperors, at his first entering the Imperial throne, in a short time, he proved a monster of iniquity.

Remark 2. Upon the election of Senators and Representatives, Art. 1. Sect. 4.—The time, places, and manner of holding elections, for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but Congress may, at any time, by law make, or alter such regulations, except as to the place of choosing Senators—By this it evidently appears, that Congress are to have power to alter, only the regulations the legislature may make respecting the time and manner of choosing Senators; the place which is much the most important is secured to the electors—But in the choice of the representative body, Congress may alter, not only the regulations of the time and manner, but *the place* of the election—the consequence is plain, Congress will, upon this plan, have full power to order all persons qualified, to appear at their shire towns, or their respective capitols, or even at the ten mile district to give in their votes for representatives—by this means nine tenths, or ninety-nine hundredths of the people, may be, yea must be wholly excluded from having any voice in the election. Where there is equal liberty, what privilege will the people have left: Fair & equal representation includes the whole privilege of the people, and if this may be curtailed, shackled or impeded at the pleasure and controul of Congress, farewell freedom—we may welcome tyranny with her galling chains. It may be said, this is overstraining the article, and no such thing was ever designed, or tho't of by the framers of the Constitution; if not, I would ask, how come the exception of *place* of election to be made; in one case, and not in the other—Was it not just as easy to have made the reserve to the people, as to the legislature. The making it to the one and not to the other, looks like a design to have an undue controul over the popular election; this breaths the spirit of British tyranny. The parliamentary influence is so great in England in the election of the members of the house of Commons, that some sensible writers have observed, that the people there have only the shadow, not the reality of liberty—This great and fundamental priviledge of the people, ought therefore to be well secured in the national plan of government—It is so in our State Constitution: all persons qualified shall be

intitled to vote within the town, destrict, or parish where they dwell in the choice of Representatives; I can see no reason why the people ought not to have equal liberty, in the choice of Representatives for Congress—they must abide the consequence of what they do; they must pay taxes and duties laid by them—They ought therefore to have a full voice in their appointment; and so far as they may be deprived of it, by the alteration of the places of election, so far they are deprived of real liberty.

Remark 3. Upon the mode of paying Congress, art. 1, sect. 6. The Senators and Representatives, shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States, art. 2. The President shall at stated times receive a compensation for his services, &c.—Here, it is plain, that the salaries of the members of Congress are to be ascertained and fixed by law—But who are to make this law? It is not said—I presume it is not the several state legislatures—They are an inferior order and cannot give law to a superior—It must then be a law of their own making, by which their salaries will be ascertained—How far Congress will extend this power (provided the Constitution is adopted) there is no man alive can tell—It is left without bound or limitation—and we may be sure, from the craving appetites of men for gain, it will be stretched as far as the patience, and abilities of the people will bear—European fashions have been transplanted into America—The high taste of foreign Courts will be relished by Congress—They must live in all the splendor of equipage and attendance—Their revenue must be equivalent—This being an infant country, and besides loaded with a large debt, will by no means be able to support it. It appears to me therefore, it would be very imprudent, in the United States to let Congress go to the continental Chest, and take out as much money as they please for their services, tho' under form of law—Common sense will teach us better—No wise householder will let her servants make a law to fix their own wages, or dip as deep as they please in his coffers—Nor will any wise community give a greater liberty to the ruling servants of the state—Some bounds ought to be set, otherwise there is no safety.[1]

It may be objected here, that our General Court vote their own salary, and yet they are very moderate in their demands. It is true, but they stand, only for a year at a time, are under the constant inspection of the people; and the Representative branch draw their wages directly from their Constituents, who watch them very narrowly; so that they have no opportunity to be lavish of publick money—The case will be very different with Congress upon the new plan—They will stand on an average three or four times as long—The greater part will be several hundred miles distant from their constituents—They will draw from the Continental Treasury, over which they themselves will have the most ample controul, and besides by another power granted, art. 1. They have liberty to secrete such parts of their conduct, as in their judgment, may require secrecy—It is easy for men to

believe secrecy, when it is for their own interest, how much soever it may be against the publick—Thus then, the disposal of publick money may constitutionally become one of the *Arcana Imperii* of Congress—For my part, I think here is a wide door open for great abuse; and it will be the wisdom of the states to shut it, by setting some bound to the salaries of their own officers—and this seems to be the more necessary, because we are loaded with a heavy debt, in order to clear it the greatest Œconomy is requisite in all our public expences. America is like a man who has a fine homestead and some out lands, but owes a large sum taken up, on interest; with care and frugality in all his expences, he can clear the interest and sink a little of the principal annually, and so finally discharge the whole. But if he drinks and games, and squanders in riotous living, he will very soon become a bankrupt; so we may, by care and prudence in our public expences, support our own government, pay the interest of our public debt, and a small part of the principal; so as in time to sink the whole—But if we lavish away our public money, and the ruling part of this young nation, will pattern after all the luxuries of European Courts, our revenue will not be sufficient to support our own government, and pay the interest to France and Holland; more money must be borrowed (if we have credit) the consequence follows, we shall sink deeper and deeper into debt, till the United States become a bankrupt.[2]

Remark 4. Upon the power of Congress, Sec. 8—They shall have power to raise and support armies; to provide and maintain a navy.—It is not mentioned expressly here when these armies are to be raised, and supported by Congress, whether in a time of peace, or war; it will be said in a time of war, or expectation of actual invasion, where there is a necessity of them, let it be so—But what is there here or in any other part of this Constitution to limit, or oblige Congress to disband the army when the war is at an end, for my part I can find nothing, it is true, in the following clause, it is said, that no appropriation of money for that use shall be for a longer term than two years; this amounts to no more, than that every second year, there shall be a new vote of Congress to appropriate money to the support of the army, upon this plan, an army may be continued, as long as they can get a vote for it; it will then be in the breast of Congress wholly to say, whether they shall exist in a time of peace; if they say they shall be kept up, they may tax the people to support them, and upon their non-compliance send the army to enforce payment, at the point of the sword; it will then to all intents and purposes upon this constitution, be in the power of congress to keep a standing army, in time of peace, their being voted every two years does not alter the case; great Britain has, as real a standing army as France, or Spain, and yet they are voted every year by parliament—Standing armies are ever dangerous, and have, always been accounted inconsistant with the liberties of a free people: it is not therefore safe, to entrust this power in the hands of any set of men without some greater limitation than is to be found in this

Constitution;—As to the power of building a navy, it is also left unlimited in the hands of Congress, it is not said, where they shall begin, nor how far they shall proceed, in the exercise of it, they may, if they please, immediately upon the adoption of this plan, lay heavy and burthensome taxes upon the people to build and maintain a fleet of ships, and yet go exactly according to the Constitution—Another unlimited power to be vested in Congress is that of exclusive Legislation, in all cases whatsoever, over such a district (not exceeding ten miles square) as may, by the cession of particular states, and the acceptance of Congress become the seat of government of the United States—We are not told in particular, what use is to be made of this district, but, no doubt, great designs are to be accomplished here equal to the authority to be delegated—A magnificent city, must be built to be the capital of the Empire—A spacious Congress house erected; A splended palace for the President—An amphitheatre for plays—A circus for games—An assembly for balls &c. (they will need no churches for public worship, for by the Constitution there is to be no religious test required in Congress)—All this will be done at the expence of the United States, for it is said, Congress shall have authority to make all laws necessary, and proper to carry into execution the foregoing powers; therefore they may constitutionally make laws for the accomplishment of the above purposes, and taxes may be levied of the people, or money borrowed of some European Power to defray the enormous expence.

How idle then is the notion that some entertain, that the establishment of this plan of government will speedily extricate us out of debt, and make us a rich and flourishing people—My opinion is the reverse, that in the complete operation and effect of it, it will be an insupportable burden, that will sink us the deeper under our present embarrassments.—It may be objected by the friends of the constitution, that this is all conjecture, and we have no reason to think or even suggest, that Congress will make such a use of their power to enslave the people—I would answer—Have we any reason to think they will not—they are to take a solemn oath to administer the Constitution faithfully, or according to the spirit of it, and if they do, the effect must necessarily be arbitrary government; this has always been pleasing to rulers—and there is no doubt, but they will make use of it, when it is voluntarily given them by the people—And when it is not, they have ever grasped after it—thus the nobles of Rome, after they had unanimously assisted the people, in abolishing the regal tyranny, were for enlarging their own power and exercising the very same tyranny, tho' under another name—So, tho' British tyranny is expelled out of these states yet, have we not reason to fear the same, tho' it may be under a different form.

Remark 5. Upon the slave trade, sect. 9. The migration, or importation of such persons, as any of the states shall think proper to admit, shall not be prohibited by Congress prior to the year eighteen hundred and eight—By the importation of the persons above-mentioned is doubtless meant the Guinea trade, by which thousands and millions of poor negroes have been

wrested from their native country, their friends and all that is dear to them, and brought into a state of the most abject slavery and wretchedness—By the above article, this cruel and barbarous practice is not to be prohibited by Congress for twenty years to come, and even then, it is not said, it shall cease—Here is a permission granted, for the enslaving and making miserable our fellow men, totally contrary to all the principles of reason, justice, benevolence and humanity, and all the kind and compassionate dictates of the Christian Religion. Can we then hold up our hands for a Constitution that licences this bloody practice? Can we who have fought so hard for Liberty give our consent to have it taken away from others? May the powers above forbid.[3]

Remark 6. Upon the appointment of the officers of the state, by the President, article 2, sect. 2—He shall have power by and with the advice and consent of the senate, to appoint Ambassadors, publick Ministers, and it is added all other officers of the United States whose appointments are not herein otherwise provided for, those appointments before provided for, in this Constitution, are the military officers reserved to the legislature; all other officers therefore, in the judicial department; such as justices of the peace and quorum judges of the inferior and superior courts must be appointed, and receive their commissions and salaries from Congress which will be improper and dangerous—The distance between so great, unworthy characters may get into office for want of proper information, and besides they will be independent of the people, and consequently suitable tools for the purposes of tyranny and oppression; as the Mandamus counsellors were under British government.

Remark 7. Upon the extent of the judicial power, art. 3, sect. 2. The judicial power shall extend to all cases in law and equity—to all controversies between two or more states—between citizens of the same state—between citizens of different states—citizens and subjects—In the larger cases there is to be original jurisdiction in the smaller appellate—What exceptions and regulations, Congress may make to this is uncertain—But as it now stands, it extends to all cases, and disputes which may happen between man and man; and so may prove, in the issue, a source of mischief and ruin to thousands—The rich and the wilful citizen may, after passing through the lower forms of law, appeal up to this federal court, at four, or five hundred miles distance; there the other party must repair, at an amazing expence, or else loose his case however just and righteoce—Hereby the course of public justice may be much obstructed, the poor oppressed, and many undone—Every door therefore against such a pernicious effect, ought to be shut in the Constitution—All wise communities would choose such an establishment, as that individuals might obtain justice, with the greatest ease, and least expence.

Remark 8. Upon the admission of new states, art. 3, sect. 3. New States may be admitted by Congress into the Union: But no New State shall be formed or erected, within the jurisdiction of any other state without the

consent of the Legislature of the state concerned—From this, it is evident, that Vermont can never be admitted as a state into the union without the consent of New-York, because of her claim of jurisdiction over it; that this consent will be obtained, is very improbable, such has long, and still continues to refuse it, the consequence is, Vermont must be obliged, either to remain as she is, and do nothing to defray the public expence which will be very impolitick, or else, submit to the government of New-York; this she will never do without a conquest by the sword: For this purpose New-York must have assistance, upon the adoption of this Constitution, she has a right to demand it of the United States; We shall consequently be bound to keep an army to cut the throats of our Brethren, a horrid scene is opened of blood and carnage. Nature shudders at the thought. We ought seriously to consider this, and not give our vote hastily to that, which we can never comply with in its operation and effects.

Remark 9. Upon the discarding of all religious tests, Art. 6, clause 3—But no religious test shall ever be required as a qualification to any office, or public trust under the United States, according to this we may have a Papist, a Mohomatan, a Deist, yea an Atheist at the helm of Government: all nations are tenatious of their religion, and all have an acknowledgment of it in their civil establishment; but the new plan requires none at all; none in Congress, none in any member of the legislative bodies; none in any single officer of the United States; all swept off at one stroke totally contrary to our state plans.—But will this be good policy to discard all religion? It may be said the meaning is not to discard it, but only to shew that there is no need of it in public officers; they may be as faithful without as with—this is a mistake—when a man has no regard to God and his laws nor any belief of a future state; he will have less regard to the laws of men, or to the most solemn oaths or affirmations; it is acknowledged by all that civil governments can't well be supported without the assistance of religion; I think therefore that so much deference ought to be paid to it, as to acknowledge it in our civil establishment; and that no man is fit to be a ruler of protestants, without he can honestly profess to be of the protestant religion.[4]—To conclude I have now given my sentiments freely and honestly upon this important subject; if it serves to throw any light upon it, I have my desire and should be heartily glad, that the respectable Convention to set at Exeter upon the decisive question, might have all that has been said for, and all that has been said against the Constitution laid before them, that they may have the fullest means of information possible and if, after judiciously and candidly weighing every argument, it is their judgment that it will be for the general good of the community to adopt, let them adopt it; but if not let them reject it; and let us make another trial for a new plan, that may in more respects be agreeable, and better secure the liberties of the subjects.

A friend to the Rights of the people.

Anti-Foederalist, No. II.

An Address to the members of the Convention, for the State of New-Hampshire, to meet at Exeter, on the second Wednesday in February 1788, for the important purpose of deciding upon a Constitution offered by the late Convention, through the medium of Congress.—

Not, Gentlemen, that I presume to think myself capable of informing you of your duty; or that you want such information, or would accept it from me. But, I would show my good wishes to my countrymen, and prepare them to reap the happy effects of their discrete choice.— 4.23.4

You, Gentlemen, have been chosen to deliberate and decide, upon the most important matter, perhaps, that ever was entrusted in the hands of any set of men; it is, in my opinion, the most dangerous crisis of our publick affairs, that any of us have beheld, in all the course of the late long and tedious war. May the God who governs the universe direct your steps.

If you adopt this constitution, as it now stands, it is my settled judgement, that you will, at once, surrender up all the liberties, privileges, and immunities of the state of New-Hampshire into the hands of Congress.— 4.23.5

Consider gentlemen—Whether it is the part of wisdom, or fidelity to your constituents, to give up all at once. Congress may thank you perhaps, for the mighty surrender, and may use you favourably at first, but, by and by, they may chastize you most severely with the rod you put into their hands. I have known men in private life, in a fit of good nature give up all their property into the hands of a favorite; and go mourning the remainder of their days, half starved and half naked to the grave.—But it is the first time, that I ever heard of a people, so soon after a long and tedious struggle for liberty attempt to surrender it to a set of men without their asking for it.—Men in power generally ask for enough—Let Congress have, what they have hitherto asked for, to regulate *Trade and Commerce*. They have told you that was sufficient, why will you give them more?

It has been said by Mr. Wilson, in support of this Constitution, and against a Bill of Rights, who dare be bold enough to enumerate all the Rights of a people:[5] Such sophistical assertions may do for his phlegmatick Germans, but will not answer for the bold, free and enterprizing people of New-Hampshire—Every honest man ought to be bold enough to declare his rights—at least, such great and essential ones, as never ought to be trusted to the caprice of any set of men—And you, gentlemen, I hope will be bold enough to spurn at a Constitution, offered you without a Bill of Rights; and receive none unless the most essential ones are enumerated—But I shall say no more on this particular, as abler pens have gone before me.— 4.23.6

But as many of you gentlemen are from the country; and have not had the advantage of hearing what has been said; I should advise you to collect 4.23.7

some of the most sensible writers, with their strictures upon the Constitution, and have them read in the Convention, and think and judge for yourselves, and decide cooly upon it—Beware of artful and designing men; (if any should be among you) as there may be those whose cunning and sophistry would deceive (if possible) the very elect.

4.23.8 Consider, gentlemen, how lavish Congress have been with your money! what exorbitant salaries they have given, and are daily giving to men, no better than yourselves, who would blush to have such salaries offered you, when, at this time, the public creditors are suffering for want of their just dues. If poverty has not made Congress frugal, it is in vain to give them the command of your purses.—Be not too much influenced, gentlemen, by the mighty sound of the great and exalted characters of those who formed this Constitution—We have thousands, as great, and good men as they, in the United States. Besides, gentlemen, there are not such mighty tallents, requisite for government as some who pretend to them (without possessing them) would make us believe—Honest affection for the general good and common qualifications are sufficient—Administration has always been best managed, and the public liberty best secured, when plain honesty and common sense alone governed the public affairs. Great abilities have for the most part been employed to mislead the honest, but unwary multitude, and to draw them out of the open and plain paths of public virtue and public good[6]—Consider for God's sake gentlemen, the sacredness of your office and the magnitude of your trust, your country, its Religion, and Laws are in your hands: if you adopt this Constitution, you overturn the whole at once; and subject yourselves and your constituents to be bound by such laws as the will and pleasure of Congress may hereafter make—Be as zealous to ward off *public evil,* as *others are to bring it on;* and you have a fair chance to prevent it for ages yet to come.—I had rather trust my purse in the hands of a sharper, than my liberties in the hands of any set of men, unless they are secured with restraints stronger than their temptations to destroy them; for the former by industry may be replenished; but liberty once lost, is scarce ever recovered, almost as rarely as human life, when it is once extinguished.

A Friend to the Republic.

1. See Mason 2.2.5 n. 3.
2. See Candidus 4.9.18 n. 6.
3. On the slave trade, see references in Martin 2.4.65 n. 24.
4. For other Anti-Federal discussions of this important matter, see Turner 4.18.2 n. 2.
5. James Wilson's speech in the Pennsylvania Convention 28 November 1787, McMaster and Stone, 253–54: ". . . for who will be bold enough to undertake to enumerate all the rights of the people?—and when the attempt to enumerate them is made, it must be remembered that if the enumeration is not complete, everything not expressly mentioned will be presumed to be purposely omitted." See Federal Farmer XVI, 2.8.196 n. 116.
6. This is taken from John Trenchard, *Cato's Letters or Essays on Liberty, Civil*

and Religious, and Other Important Subjects, 3d ed. (London 1733) I, no. 24, pp. 177–78: "Besides, there are not such mighty Talents requisite for Government, as some, who pretend to them without possessing them, would make us believe: Honest Affections, and common Qualifications, are sufficient: and the Administration has been always best executed, and the publick Liberty best preserved, near the Origin and Rise of States, when Plain Honesty and common Sense alone governed publick Affairs, and the Morals of Men were not corrupted with Riches and Luxury, nor their Understanding perverted by Subtleties and Distinctions. Great Abilities have, for the most part, if not always, been employed to mislead the honest but unwary Multitude, and to draw them out of the open and plain Paths of publick Virtue and publick Good."

Letter by David

MASSACHUSETTS GAZETTE
7 March 1788

Although not explicitly Anti-Federal, the essay of David is a reply to a Federalist defense of the absence from the Constitution of any religious test, and it is an excellent statement of an important Anti-Federalist theme: the need to promote civic virtue through the public protection and promotion of religion. "[I]t is not more difficult to build an elegant house without tools to work with, than it is to establish a durable government without the publick protection of religion" (4.24.6).

Mr. Allen,

4.24.1 A Connecticut writer, whose very curious production, under the signature of Elihu, was *honoured* with a place in your Gazette of the 26th of February, in treating of religious acknowledgements and professions, appears to consider all who retain any symptoms of religion, as rogues or fools.[1] It is not my intention to become a polemick divine, nor to enter into a dispute with those, whose argument, if it proves any thing, proves that their own hearts are not under the influence of religion. I mean only to consider the matter in a political view, in order, if we can, to determine whether the state ought or ought not to interfere at all in religious concernments.[2]

4.24.2 It is agreed on all hands, that the business of government is to secure the subjects in the enjoyment of their lives, liberty and property, and that it must be furnished with all the powers necessary to attain so desirable an object. It is clearly impossible to secure the subject unless the invasions of lawless men can be restrained. There have been but three ways hitherto invented by which the turbulent passions of mankind are controlled; 1st. By punishing offenders, 2d. By rewarding virtuous actions, and 3d. By prepossessing the people in favour of virtue by affording publick protection to religion. The first method is least eligible of them all unless when it is absolutely necessary; and the more frequent it becomes, the less efficacious it is. The second is in its own nature very confined, and can take place only in a few of the most exalted instances, so that it can produce no effect upon

the body of mankind. The third method then, by forming the opinion of the people at large in favour of virtue and religion, is in theory the most probable, and if we find in practice it has been most successful, we shall hardly hesitate to say, that religion is a proper subject for publick protection and encouragement.

If we examine the history of mankind, under whatever dispensation of religion they lived, we find, that while their circumstances were improving, they attended much to their religious system. They frequently acknowledged the superintendence of the Gods, and sought their protection. They are careful to train up their children in the religion of their ancestors, and it has been generally if not always a fundamental article that moral offences would be punished by the Deity, even if they escaped the laws of human society, unless satisfaction was made to the sovereign of the universe for the violation of good order. Every nation, I believe, has committed the care of religion to the government, and almost every government has adopted some institution for instructing the subjects both old and young in principles, which had a direct tendency to secure the practice of good morals and consequently the peace of society. In Europe it has been carried to an absurd extreme. It gave rise to an elective monarchy, which claimed jurisdiction over the different states and princes, and pervaded all parts of their dominions. As it was an empire, founded in opinion, and in principles which took fast hold of the human mind, kings could not always defend themselves by force from its encroachments on their prerogatives. After the reformation, which Luther boldly begun, the reformed countries deprived the pope of his supremacy, and transferred it to themselves. Still however they took care to provide means for the instruction of the subjects, because that religion had always been found to attach the professors of it to what they conceived to be good order and the constitution they lived under. No good reason has been given why the government should not provide for their instruction in such principles as tend to secure internal peace, any more than for instructing the people in the arts of defence. The power indeed, like any other power, may be abused; but it by no means follows that government should not be possessed of it under certain limitations. 4.24.3

The practice of our own country has been uniformly in favour of a limited power of this kind in the government. We have from the beginning had laws in favour of a learned and able clergy, and have provided means for their education and support. We have had and still have laws for a due observance of the Sabbath; and our annual fasts and thanksgivings are not only uniform proofs of the exercise of such a power; but are instances of the propriety of our conduct in making frequent and publick acknowledgments of our dependence upon the Deity. Never did any people possess a more ardent love of liberty than the people of this state; yet that very love of liberty has induced them to adopt a religious test, which requires all publick 4.24.4

officers to be of some Christian, protestant persuasion, and to abjure all foreign authority. Thus religion secures our independence as a nation, and attaches the citizens to our own government.

4.24.5 I know it is a common objection against religious tests, that they bind only those who are good men, and do not exclude bad ones. The same remark is true of oaths; yet every government requires them, and an oath is, as much as a test, a religious declaration. Nothing can be urged in favour of one which does not apply to the other. It is true, indeed, that bad men will agree to either. Still however, those, whose avowed principles are unfriendly to the system of the country, will be excluded: And there are two descriptions of men that ought to be excluded. These are Papists and Atheists. The latter should be excluded because they have no principles of virtue, and the former because they acknowledge a foreign head, who can relieve them from the obligation of an oath. There is therefore no publick dependence upon either, and men publickly and avowedly of either description should be excluded.

4.24.6 We have now seen what have been the principles generally adopted by mankind, and to what degree they have been adopted in our own state. Before we decide in favour of our practice, let us see what has been the success of those who have made no publick provision for religion. Unluckily we have only to consult our next neighbours.[3] In consequence of this publick inattention they derive the vast benefit of being able to do whatever they please without any compunction. Taught from their infancy to ridicule our formality as the effect of hypocrisy, they have no principles of restraint but laws of their own making; and from such laws may Heaven defend us. If this is the success that attends leaving religion to shift wholly for itself, we shall be at no loss to determine, that it is not more difficult to build an elegant house without tools to work with, than it is to establish a durable government without the publick protection of religion. What the system is which is most proper for our circumstances will not take long to determine. It must be that which has adopted the purest moral principles, and which is interwoven in the laws and constitution of our country, and upon which are founded the habits of our people. Upon this foundation we have established a government of influence and opinion, and therefore secured by the affections of the people; and when this foundation is removed, a government of mere force must arise.

David.

1. The essay of Elihu was originally printed in the Hartford, Connecticut, *American Mercury* 18 February 1788; it was reprinted in the *Massachusetts Gazette* 26 February 1788, to which David replied. Elihu took up the argument of William Williams, a supporter of the Constitution, that the Constitution should contain a preamble expressing a belief in God and an acknowledgment that "all rightful powers among men are ordained of, and mediately derived from God" and that a religious test along these lines should be required of officers of the government. (For Williams'

essay, see Ford, *Essays* 203–9. This matter was discussed at some length in both the Connecticut and Massachusetts conventions; see A Landholder [Oliver Ellsworth], Ford, *Essays* 167–71, 195; Elliot II, 44, 90, 118–20.) Elihu argued that a declaration of belief in God is unnecessary (the belief being universal), that it would exclude only those nonbelievers fools enough to declare their opinions, that it cannot be presumed to be needed or desired by God Himself, and therefore that the proposal must be some kind of political trick. "The time has been when nations could be kept in awe with stories of God's sitting with legislators and dictating laws; with this lure, cunning politicians have established their own power on the credulity of the people, shackling their uninformed minds with incredible tales. But the light of philosophy has arisen in these latter days; miracles have ceased, oracles are silenced, monkish darkness is dissipated, and even witches at last hide their heads. Mankind are no longer to be deluded with fable. Making the glory of God subservient to the temporal interest of man, is a worn-out trick: and a pretence to superiour sanctity and special grace, will not much longer promote weakness over the head of wisdom." "The most shining part, the most brilliant circumstance in honour of the framers of the constitution is their avoiding all appearance of craft, declining to dazzle even the superstitious, by a hint about grace or ghostly knowledge. They come to us in the plain language of common sense, and propose to our understanding a system of government, as the invention of mere human wisdom; no deity comes down to dictate it, not even a god appears in a dream to propose any part of it." See also Ford, *Pamphlets* 55–56 (A Citizen of America); Aristocratis 3.16.14–15 n. 9.

2. Cf. the speech of Charles Turner 4.18.2 n. 2.

3. The reference is, of course, to Rhode Island. This is one of the rare statements in the Federalist–Anti-Federalist debate connecting the widely agreed-upon political excesses of Rhode Island and her religious toleration.

Essay by A Newport Man

NEWPORT MERCURY
March 1788

This brief essay is distinguished chiefly by the fact that it contains what appears to be the only reference to Rousseau in the Anti-Federalist literature. A quotation from Rousseau, together with the examples of the Swiss cantons and the republics of San Marino and Lucca, are used to urge the dangers of giving up power to representatives.

Mr. Barber,

Please to insert the following in your impartial paper.

4.25.1 Trusting to the force of truth, and the ingenuity of abler men, I had determined to continue, as I have hitherto been, silent on the subject of the new Constitution; but seeing the unwearied attempts for innovation by a set of men who seem to consider government as

"intended
"For nothing else, but to be mended."[1]

I think it my duty, however feeble the effort, to throw in my mite to oppose the torrent of sophistry and misrepresentation that is weekly obtruded on the public.

4.25.2 I perceive in your last a piece signed "*A Rhode-Island Man,*" it seems wrote with an air of confidence and triumph—he speaks of reason and reasoning,[2] I wish he had known or practised some of that reasoning he so much pretends to, his essay had been much shorter—We are told in this piece, as well as others on the same side, that an ability given to British subjects to recover their debts in this country will be one of the blessings of a new government, by inducing the British to abandon the frontiers, or be left without excuse,—but the British have no other reason for holding the posts, after the time named in the treaty for their evacuation, than the last reason of Kings, that is, their guns,—and giving them the treasure of the United States is a very unlikely means of removing that,—if the British subject met with legal impediments to the recovery of his debts in this

country, for British government to have put the same stop on our citizens would have been a proper, an ample retaliation; but there is nothing within the compass of possibility, of which I am not perfectly sure, that I am more fully persuaded of, than I am, that the British will never relinquish the posts in question until compelled by force; because no nation pays less regard to the faith of treaties than the British, witness their conduct to the French in 1755, when they took a very great number of men of war and merchant ships before war was declared, because the French had built some forts on the south side of an imaginery line in the wilde of America,—and again, the violation of the articles by which the people of Boston resigned their arms, and the violation of the capitulation of Charles-Town,—again we are told that Congress has no credit with foreigners, because they have no power to fulfill their engagements, and this we are told, with a boldness exceeded by nothing but its falshood, perhaps in the same paper that announces to the world the loan of a million of Holland gilders, if I mistake not the sum—a sum equal to 250,000 Spanish Dollars, and all this done by the procurement of that very Congress whose insignificancy and want of power had been constantly proclaimed for two or three years before,—The Dutch are the most cautious people on earth, and it is reasonable to suppose they were abundantly persuaded of the permanency and efficacy of our government by their risking so much money on it.

We are told that so long as we withhold this power from Congress we shall 4.25.3
be a weak, despised people—we were long contending for Independence, and now we are in a passion to be rid of it—but let us attempt to reason on this subject, and see to which side that will lead us—Reason is truly defined, in all cases short of mathematical demonstration, to be a supposing that the like causes will produce the like effects; let us proceed by this rule—the Swiss Cantons for an hundred years have remained separate Independent States, consequently without any controuling power; even the little Republic of St. Marino, containing perhaps but little more ground than the town of Newport, and about five thousand inhabitants, surrounded by powerful and ambitious neighbours, has kept its freedom and independence these thirteen hundred years, and is mentioned by travellers as a very enlightened and happy people; if these small republics, in the neighbourhood of the warlike and intriguing Courts of Paris, Vienna, and Berlin, have kept their freedom and original form of government, is it not reasonable to suppose, that the same good sense and love of freedom, on this side the Atlantic, will secure us from all attempts within and without; and the only internal discord that has happened in Switzerland was on a religious account, and a supreme controuling power is no security against this, as appears by what happened in Ireland in the time of Charles the first, and in France in the time of Henry the fourth,—It seems rational in a case of this importance to consult the opinion of the ablest men, and to whom can we better appeal than to J. J. Rouseau, a republican by birth and education, one of the most

exalted geniuses and one of the greatest writers of his age, or perhaps any age, a man the most disinterested and benevolent towards mankind, a man the most industrious in the acquisition of knowledge and information, by travel, conversation, reading, and thinking, and one who has wrote a Volume on Government entitled the Social Contract, wherein he inculcates, that the people should examine and determine every public act themselves[;] his words are, that "every law that the people have not ratified in person, is void, it is no law. The people of England think they are free, they are much mistaken, they are never so but during the election of members of Parliament, as soon as they are elected, they are slaves, they are nothing, and by the use they make of their liberty, during the short moments they possess it, they well deserve to lose it."[3]—This is far from advising that thirty thousand souls should resign their judgments and wills intirely to one man for two years, to a man, who, perhaps, may go from home sincere and patriotic, but by the time he has dined in pomp for a week with the wealthy citizens of New-York or Philadelphia, will have lost all his rigid ideas of oeconomy and equality—he becomes fascinated with the elegancies and luxuries of wealth, these splendid appearances with some hints from his prerogative acquaintance, that if Government were fixed, and the perquisites of office sufficient to induce a man of abilities to accept, no doubt you, or one of your sons, would be the man for your quarter; objects and intimations like these soon change the champion for the people to an advocate for power, and the people finding themselves thus basely betrayed, cry that virtue is but a name. We are not sure that men have more virtue at this time and place than they had in England in the time of George the 2d[;] let any one look into the history of those times, and see with what boldness men changed sides and deserted the people in pursuit of profit and power. If to take up the cross and renounce the pomps and vanities of this sinful world, is a hard lesson for divines, 'tis much harder for politicians,—a Cincinnatus, a Cato, a Fabricious, and a Washington, are rarely to be found. We are told that the Trustees of our powers and freedom being mostly married men, and all of them inhabitants and proprietors of the country, is an ample security against an abuse of power[;] whether human nature be less corrupt than formerly I will not determine; but this I know that Julius Caesar, Oliver Cromwell, and the nobles of Venice, were natives and inhabitants of the countries whose power they usurped and drenched in blood. Again, our country is compared to a ship of which we are all part owners, and from thence 'tis gravely concluded that no officer can ever betray or abuse his trust; but that men will sacrifice the public to their private interest, is a saying too well known to need repeating, and the instances of designed shipwrecks, and ships run away with by a combination of masters, supercargoes, and part owners, is so great that nothing can equal them, but those instances in which pretended patriots and politicians have raised themselves

and families to power and greatness, by destroying that freedom, and those laws, they were chosen to defend.

If it were necessary to cite more precedents to prove that the people ought not to trust or remove their power any further from them, the little Republic of Lucca may be mentioned, which, surrounded by the Dukedom of Tuscany, has existed under its present constitution about five hundred years, and as Mr. Addison says, is for the extent of its dominion the richest and best peopled of all the States of Italy—and he says further, that "the whole administration of the government passes into different hands every two months."[4] This is very far from confirming the doctrine of choosing those officers for two years who were before chosen for one. The want of a decisive efficient power is much talked of by the discontented, and that we are in danger of being conquered by the intrigues of European powers.—But it has already been shewn that we have delegated a more decisive power to our Congress than is granted by the Republic Swiss Cantons to their General Diet; these Republics have enjoyed peace some hundreds of years, while those governments which possess this decisive, efficient power, so much aimed at, are as often as twenty or thirty years, drawing their men from the plough and loom to be shot at and cut each others throats for the honour of their respective nations. And by how much further we are from Europe than the Swiss Cantons with their allies, and Lucca and St. Marino are from France, Prussia, and Austria, by so much less are we in danger of being conquered than those Republics, which have existed some earlier than others, but the youngest of them one hundred and thirty years, without being conquered. As for the United Provinces of Holland they are but nominal Republics, their Stadtholder, very much like our intended President, making them in reality a monarchy, and subject to all its calamities; but supposing that the present constitution penned by the ablest men, four or five years in completion, and its adoption considered as the happiest event—supposing, I say, the present Constitution destroyed, can a new one be ratified with more solemnity, agreed to in stronger or more binding terms? What security can be given that in seven years hence, another Convention shall not be called to frame a third Constitution? And as ancient Greece counted by olympiads, and monarchies by their Kings reigns, we shall date in the first, second, or third year, of the seventh, eighth, or ninth Constitution. 4.25.4

In treating this subject I have not presumed to advise, and have intruded but few comments. I have mentioned the state of those countries which most resemble our own and leave to the natural sense of the reader to make his own conclusions. The male-contents, the lovers of novelty, delight much in allegory. Should I be indulged a few words in that way, I should not compare the new Constitution to a house, I should fetch my simile from the country, and compare it to Siberian Wheat (otherwise called Siberian cheat) 4.25.5

which is known to have been the most praised, the most dear, the most worthless, and most short lived thing that was ever adopted—but if the freemen of this continent are weary of that power and freedom they have so dearly bought, and so shortly enjoyed—the power of judging and determining what laws are most wholesome, that taxes are requisite and sufficient, I say, if the people are tired of these privileges, now is the time to part with them forever. Much more might be said to shew the bitterness and mischief contained in this gilded pill, but being fond of brevity, I shall rely on the good sense of the public to keep themselves out of the trap, and sign myself in plain English,

A Newport Man.

March 3, 1788.

1. The source of this quotation has not been found.
2. *Newport Mercury* 25 February 1788.
3. J. J. Rousseau, *Social Contract* III, ch. 15.
4. "Remarks on Italy" (Republic of Lucca), *Works of Joseph Addison* (New York 1837) III, p. 368. Addison concludes, however: "but in any exigence of state, like that they are now pressed with, it certainly asks a much longer time to conduct any design, for the good of the commonwealth, to its maturity and perfection."

Consider Arms, Malichi Maynard, and Samuel Field
Reasons for Dissent

HAMPSHIRE GAZETTE
9 and 16 April 1788

While stating that they are disposed to obey the Constitution if it is accepted, these three Anti-Federalist members of the Massachusetts ratifying convention, like many others, were led to publish their reasons for dissent. They object to the 3/5 clause, to the provision for Congress altering state regulations dealing with federal elections, and to the absence of sufficient checks in the proposed constitution against abuse of power. The interesting part of the statement has to do with the constitutional provision regarding the slave trade, which Consider Arms and his friends subject to fairly penetrating criticism as a falling away from the principles of liberty on which the country was based. The statement stimulated an exchange between Philanthrop and Phileleutheros between 23 April and 21 May in the *Hampshire Gazette* (see Phileleutheros 4.27).

9 April 1788

We the subscribers being of the number, who did not assent to the ratification of the federal constitution, under consideration in the late state convention, held at Boston, to which we were called by the suffrages of the corporations to which we respectively belong—beg leave, through the channel of your paper to lay before the public in general, and our constituents in particular, the reasons of our dissent, and the principles which governed us in our decision of this important question. 4.26.1

Fully convinced, ever since the late revolution, of the necessity of a firm, energetic government, we should have rejoiced in an opportunity to have given our assent to such a one; and should in the present case, most cordially have done it, could we at the same time been happy to have seen the liberties of the people and the rights of mankind properly guarded and 4.26.2

secured. We conceive that the very notion of government carries along with it the idea of justice and equity, and that the whole design of instituting government in the world, was to preserve men's properties from rapine, and their bodies from violence and bloodshed.

4.26.3 These propositions being established, we conceive must of necessity produce the following consequence: That every constitution or system, which does not quadrate with this original design, is not government, but in fact a subversion of it.

Having premised thus much, we proceed to mention some things in this constitution to which we object, and to enter into an inquiry, whether, and how far they coincide with those simple and original notions of government before mentioned.

4.26.4 In the first place, as direct taxes are to be apportioned according to the numbers in each state, and as Massachusetts has none in it but what are declared free men, so the whole, blacks as well as whites, must be numbered; this must therefore operate against us, as two-fifths of the slaves in the southern states are to be left out of the numeration. Consequently, three Massachusetts infants will increase the tax equal to five sturdy full-grown negroes of theirs, who work every day in the week for their masters, saving the Sabbath, upon which they are allowed to get something for their own support. We can see no justice in this way of apportioning taxes. Neither can we see any good reason why this was consented to on the part of our delegates.

4.26.5 We suppose it next to impossible that every individual in this vast continental union, should have his wish with regard to every single article composing a frame of government. And therefore, although we think it more agreeable to the principles of republicanism, that elections should be annual, yet as the elections in our own state government are so, we did not view it so dangerous to the liberties of the people, that we should have rejected the constitution merely on account of the biennial elections of the representatives—had we been sure that the people have any security even of this. But this we could not find. For although it is said, that "the House of Representatives shall be chosen every second year, by the people of the several states," etc., and that "the times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof," yet all this is wholely superseded by a subsequent provision, which empowers Congress at any time to enact a law, whereby such regulations may be altered, except as to the places of choosing senators. Here we conceive the people may be very materially injured, and in time reduced to a state of as abject vassalage as any people were under the control of the most mercenary despot that ever *tarnished* the pages of history. The depravity of human nature, illustrated by examples from history, will warrant us to say, it may be possible, if not probable, that

the congress may be composed of men who will wish to burden and oppress the people. In such case, will not their inventions be fruitful enough to devise occasions for postponing the elections? And if they can do this once, they can twice; if they can twice, they can thrice, so by degrees render themselves absolute and perpetual. Or, if they choose, they have another expedient. They can alter the place of holding elections. They can say, whatever the legislature of this state may order to the contrary, that all the elections of our representatives shall be made at Mechias, or at Williamstown. Consequently, nine-tenths of the people will never vote. And if this should be thought a measure favorable to their reelection, or the election of some tool for their mercenary purposes, we doubt not it will be thus ordered. But says the advocates for the constitution, "it is not likely this will ever happen; we are not to expect our rulers will ever proceed to a wanton exercise of the powers given them."[1] But what reason have we more than past ages, to expect that we shall be blessed with impeccable rulers? We think not any. Although it has been said that every generation grows wiser and wiser, yet we have no reason to think they grow better and better. And therefore the probability lies upon the dark side. Does not the experience of past ages teach, that men have generally exercised all the powers they had given them, and even have usurped upon them, in order to accomplish their own sinister and avaricious designs, whenever they thought they could do it with impunity? This we presume will not be denied. And it appeared to us that the arguments made use of by the favorers of the constitution, in the late convention at Boston, proceeded upon the plan of righteousness in those who are to rule over us, by virtue of this new form of government. But these arguments, we confess, could have no weight with us, while we judge them to be founded altogether upon a slippery *perhaps*.

We are sensible, that in order to the due administration of government, it 4.26.6
is necessary that certain powers should be delegated to the rulers from the people. At the same time, we think they ought carefully to guard against giving so much as will enable those rulers, by that means, at once, or even in process of time, to render themselves absolute and despotic. This we think is the case with the form of government lately submitted to our consideration. We could not, therefore, acting uprightly, consulting our own good and the good of our constituents, give our assents unto it. We could not then and we still cannot see, that because people are many times guilty of crimes and deserving of punishment, that it from thence follows the authority ought to have power to punish them when they are not guilty, or to punish the innocent with the guilty without discrimination, which amounts to the same thing. But this we think in fact to be the case as to this federal constitution. For the congress, whether they have provocation or not, can at any time order the elections in any or all the states to be conducted in such manner as wholey to defeat and render entirely nugatory the intention of those elec-

tions, and convert that which was considered and intended to be the palladium of the liberties of the people—the grand bulwark against any invasion upon them—into a formidable engine, by which to overthrow them all, and thus involve them in the depth of misery and distress. But it was pled by some of the ablest advocates of the constitution, that if congress should exercise such powers to the prejudice of the people (and they did not deny but they could if they should be disposed) they (the people) would not suffer it. They would have recourse to the *ultima ratio,* the *dernier resort* of the oppressed—*the sword.*[2]

4.26.7 But it appeared to us a piece of *superlative incongruity* indeed, that the people, whilst in the full and indefeasible possession of their liberties and privileges, should be so very profuse, so very liberal in the disposal of them, as consequently to place themselves in a predicament miserable to an extreme. So wretched indeed, that they may at once be reduced to the sad alternative of yielding themselves vassals into the hands of a venal and corrupt administration, whose only wish may be to aggrandize themselves and families—to wallow in luxury and every species of dissipation, and riot upon the spoils of the community; or take up the sword and involve their country in all the horrors of a civil war—the consequences of which, we think, we may venture to augur will more firmly rivet their shackles and end in the entailment of vassalage to their posterity. We think this by no means can fall within the description of government before mentioned. Neither can we think these suggestions merely chimerical, or that they proceed from an overheated enthusiasm in favor of republicanism; neither yet from an illplaced detestation of aristocracy; but from the apparent danger the people are in by establishing this constitution. When we take a forward view of the proposed congress—seated in the federal city, ten miles square, fortified and replenished with all kinds of military stores and every implement; with a navy at command on one side, and a land army on the other—we say, when we view them thus possessed of the sword in one hand and the purse strings of the people in the other, we can see no security left for them in the enjoyment of their liberties, but what may proceed from the bare possibility that this supreme authority of the nation may be possessed of virtue and integrity sufficient to influence them in the administration of equal justice and equity among those whom they shall govern. But why should we voluntarily choose to trust our all upon so precarious a tenure as this? We confess it gives us pain to anticipate the future scene: a scene presenting to view miseries so complicated and extreme, that it may be part of the charms of eloquence to extenuate, or the power of art to remove.

Consider Arms
Malichi Maynard
Samuel Field

16 April 1788

Conclusion of Mrssrs. Arms's, Maynard's and Field's Reasons for giving their Dissent to the Federal Constitution.

But we pass on to another thing, which (aside from every other consideration) was, and still is an insuperable objection in the way of our assent. This we find in the 9th section under the head of restrictions upon Congress, viz. "The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress, prior to the year one thousand eight hundred and eight," &c.[3] It was not controverted in the Convention, but owned that this provision was made purely that the southern states might not be deprived of their profits arising from that most *nefarious* trade of enslaving the Africans. The hon. Mr. King himself, who was an assistant in forming this constitution, in discoursing upon the slave trade, in the late Convention at Boston, was pleased to design it by this epithet, *nefarious*,[4] which carries with it the idea of something peculiarly wicked and abominable: and indeed we think it deserving of this and every odious epithet which our language affords, descriptive of the iniquity of it. This being the case, we were naturally led to enquire why we should establish a constitution, which gives licence to a measure of this sort—How is it possible we could do it consistent with our ideas of government consistent with the principles and documents we endeavour to inculcate upon others? It is a standing law in the kingdom of Heaven, "Do unto others as ye would have others do unto you." This is the royal law—this we often hear inculcated upon others. But had we given our affirmative voice in this case, could we have claimed to ourselves that consistent line of conduct, which marks the path of every honest man? Should we not rather have been guilty of a contumelious repugnancy, to what we profess to believe is equitable and just? Let us for once bring the matter home to ourselves, and summons up our own feelings upon the occasion, and hear the simple sober verdict of our own hearts, were we in the place of those unhappy Africans—this is the test, the proper *touch-stone* by which to try the matter before us. Where is the man, who under the influence of sober dispassionate reasoning, and not void of natural affection, can lay his hand upon his heart and say, I am willing my sons and my daughters should be torn from me and doomed to perpetual slavery? We presume that man is not to be found amongst us: And yet we think the consequence is fairly drawn, that this is what every man ought so be able to say, who voted for this constitution. But we dare say this will never be the case here, so long as the country has power to repel force by force. Notwithstanding this we will practice this upon those who are destitute of the power of repulsion: from

4.26.8

whence we conclude it is not the tincture of a skin, or any disparity of features that are necessarily connected with slavery, and possibly may therefore fall to the lot of some who voted it, to have the same measure measured unto them which they have measured unto others.[5] If we could once make it our own case, we should soon discover what distress & anxiety, what poignant feelings it would produce in our own breasts, to have our infants torn from the bosoms of their tender mothers—indeed our children of all ages, from infancy to manhood, arrested from us by a banditti of lawless ruffians, in defiance of all the laws of humanity, and carried to a country far distant, without any hopes of their return—attended likewise with the curring reflection, that they were likely to undergo all those indignities, those miseries, which are the usual concomitants of slavery. Indeed when we consider the depredations committed in Africa, the cruelties exercised towards the poor captivated inhabitants of that country on their passage to this—crowded by droves into the holds of ships, suffering what might naturally be expected would result from scanty provisions, and inelastic infectious air, and after their arrival, drove like brutes from market to market, *branded* on their naked *bodies* with *hot irons*, with the initial letters of their masters names—fed upon the entrails of beasts like swine in the slaughter-yard of a butcher; and many other barbarities, of which we have documents well authenticated: then put to the hardest of labour, and to perform the vilest of drudges—their master (or rather *usurpers*) by far less kind and benevolent to them, than to their horses and their hounds. We say, when we consider these things (the recollection of which gives us pain) conscience applauds the dicision we have made, and we feel that satisfaction which arises from acting agreeable to its dictates. When we hear those barbarities pled for—When we see them voted for, (as in the late Convention at Boston) when we see them practised by those who denominate themselves Christians, we are presented with something truely *heterogeneous*—something *monstrous* indeed! Can we suppose this line of conduct keeps pace with the rule of right? Do such practices coincide with the plain and simple ideas of government before-mentioned? By no means. We could wish it might be kept in mind, that the very notion of government is to protect men in the enjoyment of those privileges to which they have a natural, therefore an indefeasible right; and not to be made an engine of rapine, robbery and murder. This is but establishing inequity, by law founded on usurpation. Establishing this constitution is, in our opinion establishing the most ignominious kind of theft, man-stealing, and so heinous and agrivated was this crime considered, by ONE who cannot err, that under the Jewish theocracy it was punished with death.[6] Indeed what can shew men scarcely more hardened, than being guilty of this crime? For there is *nothing else* they will stick at in order to perpetrate this.

4.26.9 The question therefore—Why should we vote for the establishment of this system? recoils upon us armed with treple force—force which sets at de-

fiance, the whole power of sophistry, employed for the defence of those, who by a "cursed thirst for gold," are prompted on to actions, which cast an indelible stain upon the character of the human species—actions at which certain quadrupeds, were they possessed of Organs for the purpose, would discover a BLUSH.

But we were told by an honourable gentleman who was one of the framers 4.26.10
of this Constitution, that the two southermost states, absolutely refused to confederate at all, except they might be gratified in this article.[7] What then? Was this an argument sufficient to induce us to give energy to this article, thus fraught with iniquity? By no means. But we were informed by that gentleman, further that those two states pled, that they had lost much of their property during the late war. Their slaves being either taken from them by the British troops, or they themselves taking the liberty of absconding from them, and therefore they must import more, in order to make up their losses. To this we say they lost no property, because they never had any in them, however much money they might have paid for them. For we look upon it, every man is the sole proprietor of his own liberty, and no one but himself hath a right to convey it unless by some crime adequate to the punishment, it should be made forfeit, and so by that means becomes the property of government: But this is by no means the case in the present instance. And we cannot suppose a vendee, can acquire property in any thing, which at the time of purchase, he knew the vendor had no right to convey. This is an acknowledgment, we are constrained to make as a tribute due to justice and equity. But suppose they had lost real property; so have we; and indeed where is the man, but will tell us he has been a great looser by means of the war? And shall we from thence argue that we have a right to make inroads upon another nation, pilfer and rob them, in order to compensate ourselves for the losses we have sustained by means of a war, in which they had been utterly neutral? Truly upon this plan of reasoning it is lawful thus to do, and had we voted the constitution as it stands, we must have given countenance to conduct equally criminal, and more so, if possible. Such arguments as the above seem to be calculated and designed for idiotcy. We however acknowledge, we think them rather an affront, even upon that.

The Hon. Gentleman above named, was asked the question—What would 4.26.11
be the consequence, suppose one or two states, upon any principle, should refuse confederating? His answer was—"The consequence is plain and easy—they would be compelled to it; not by force of arms; but all commerce with them would be interdicted; their property would be seized in every port they should enter, and by law made forfeit: and this line of conduct would soon reduce them to order." This method of procedure perhaps no one would be disposed to reprehend; and if eleven, or even nine states were agreed, could they not, ought they not to take this method, rather than to make a compact with them, by which they give countenance, nay even bind themselves (as the case may be) to aid and assist them in spo[r]ting with the

liberties of others, and accumulating to themselves fortunes, by making thousands of their fellow creatures miserable. To animadvert upon the British manoevres at that time, would not fall within the compass of our present design. But that the Africans had a right to depart, we must assert, and are able to prove it from the highest authority perhaps that this Commonwealth does or ever did afford. In a printed pamphlet, published in Boston in the year 1772, said to be the report of a Committee, and unanimously voted by said town, and ordered to be sent to the several towns in the state for their consideration. In said pamphlet we find the following *axiom*, which we will quote verbatim,—page 2d—"All men have a right to remain in a state of nature as long as they please, and in case of intolerable oppression, civil or religious, to leave the society they belong to, and enter into another."[8] If it can by any kind of reasoning be made to appear, that this authority is not pertinently adduced in the case before us, then we think it can by the same reasoning be investigated, that black is white and white is black—that oppression and freedom are exactly similar, and benevolence and malignity synonymous terms.

4.26.12 The advocates for the constitution seemed to suppose, that this restriction being laid upon Congress only for a term of time, is the "fair dawning of liberty." That "it was a glorious acquisition towards the final abolition of slavery."[9] But how much more glorious would the acquisition have been, was such abolition to take place the first moment the constitution should be established. If we had said that after the expiration of a certain term the practice should cease, it would have appeared with a better grace; but this is not the case, for even after that, it is wholly optional with the Congress, whether they abolish it or not. And by that time we presume that enslaving the Africans will be accounted by far less an inconsiderable affair than it is at present; therefore conclude from good reasons, that the '*nefarious practice*' will be continued and increased as the inhabitants of the country shall be found to increase.[10]

4.26.13 This practice of enslaving mankind is in direct opposition to a fundamental maxim of truth, on which our state constitution is founded, viz. "All men are born free and equal."[11] This is our motto. We have said it—we cannot go back. Indeed no man can justify himself in enslaving another, unless he can produce a commission under the broad seal of Heaven, purporting a licence therefor from him who created all men, and can therefore dispose of them at his pleasure.

4.26.14 We would not be thought to detract from the character of any person, but to us it is somewhat nearly paradoxical, that some of our leading characters in the law department (especially in the western counties) after having (to their honour be it spoken) exerted themselves to promote, and finally to effect the emancipation of slaves, should now turn directly about, and exhibit to the world principles diametrically opposite thereto: that they should now appear such strenuous advocates for the establishment of that di-

abolical trade of importing the Africans. But said some, it is not we who do it—and compared it to entering into an alliance with another nation, for some particular purpose;[12] but we think this by no means a parallel. We are one nation, forming a constitution for the whole, and suppose the states are under obligation, whenever this constitution shall be established, reciprocally to aid each other in defence and support of every thing to which they are entitled thereby, right or wrong. Perhaps we may never be called upon to take up arms for the defence of the southern states, in prosecuting this abominable traffick.

It is true at present there is not much danger to be apprehended, and for this plain reason are those innocent Africans (as to us) pitched upon to drag out their lives in misery and chains. Such is their local situation—their unpolished manner—their inexperience in the art of war, that those invaders of the rights of mankind knew they can, at present, perpetrate those enormities with impunity. But let us suppose for once, a thing which is by no means impossible, viz. that those Africans should rise superior to all their local and other disadvantages, and attempt to avenge themselves for the wrongs done them? Or suppose some potent nation should interfere in their behalf, as France in the cause of America, must we not rise and resist them? Would not the Congress immediately call forth the whole force of the country, if needed, to oppose them, and so attempt more closely to rivet their manacles upon them, and in that way perpetuate the miseries of those unhappy people? This we think the natural consequence which will flow from the establishment of this constitution, and that it is not a forced, but a very liberal construction of it. It was said that "the adoption of this Constitution, would be ominous of much good, and betoken the smiles of Heaven upon the country."[13] But we view the matter in a very different light; we think this latch for unjust gains, this lust for slavery, portentous of much evil in America, for the cry of innocent blood, which hath been shed in carrying on this execrable commerce, hath undoubtedly reached to the Heavens, to which that cry is always directed, and will draw down upon them vengeance adequate to the enormity of the crime. To what other cause, than a full conviction, of the moral evil in this practice, together with some fearful forebodings of punishment therefor arising in the minds of the Congress in the year 1774, can it be imputed, that drew from them at that time, (at least an implied) confession of guilt, and a solemn, explicit promise of reformation? This is a fact, but lest it should be disputed, we think it most safe for ourselves to lay before our readers, an extract from a certain pamphlet, entitled "Extracts from the votes and proceedings of the American Continental Congress, held at Philadelphia, on the 5th of September, 1774, &c."[14] In the 22d page of this same pamphlet, we find the following paragraph, viz. "Second. That we will neither import, nor purchase any slave imported, after the first day of December next; after which time we will wholly discontinue the slave-trade, and will neither be concerned in it our-

4.26.15

selves, nor will we hire our vessels nor sell our commodities or manufactures to those who are concerned in it." The inconsistency of opposing slavery, which they thought designed for themselves, and by clandestine means, procuring others to enslave at the same time—it is very natural to suppose would stare them in the face, and at all times guard them against breaking their resolution. Hence it appears to us unaccountably strange, that any person who signed the above resolve, should sign the federal constitution. For do they not hold up to view principles diametrically opposite? Can we suppose that what was morally evil in the year 1774, has become in the year 1788, morally good? Or shall we change evil into good and good into evil, as often as we find it will serve a turn? We cannot but say the conduct of those who associated in the year 1774 in the manner above, and now appear advocates for this new constitution, is highly inconsistent, although we find such conduct has the celebrated names of a *Washington* and an *Adams* to grace it. And this may serve as a reason why we could not be wrought upon by another argument, which was made use of in the Convention in favour of the constitution, viz. the *weight of names*—a solid argument with some people who belonged to the Convention, and would have induced them to comply with measures of almost any kind. It was urged that the gentlemen who composed the federal Convention, were men of the greatest abilities, integrity and erudition, and had been the greatest contenders for freedom. We suppose it to be true, and that they have exemplified it, by the manner in which they have earnestly dogmatized for liberty—But notwithstanding we could not view this argument, as advancing any where towards infallibility—because long before we entered upon the business of the Convention, we were by some means or other possessed with a notion (and we think from good authority) that "*great men are not always wise*". And to be sure the weight of the name adduced to give efficacy to a measure where liberty is in dispute, cannot be so likely to have its intended effect, when the person designed by that name, at the same time he is brandishing his sword, in the behalf of freedom for himself—is likewise tyranizing over two or three hundred miserable Africans, as free born as himself.

4.26.16 In fine we view this constitution as a curious piece of political mechanism, fabricated in such manner as may finally despoil the people of all their privileges; and we are fully satisfied, that had the same system been offered to the people in the time of the contest with Great-Britain, the person offering the same would not have met the approbation of those who now appear the most strenuous advocates for it. We cannot slip this opportunity of manifesting our disgust at the unfair methods which were taken in order to obtain a vote in this state, which perhaps was the means of producing the *small* majority of *nineteen*, out of nearly three hundred and sixty members. What those methods were is well known. It is past dispute that the opposers of the constitution were, in sundry instances, treated in a manner utterly

inconsistent with that respect which is due to every freeborn citizen of the commonwealth, especially when acting in the capacity of a representative.

Notwithstanding what has been said, we would not have it understood, that we mean to be disturbers of the peace, should the states receive the constitution; but on the contrary, declare it our intention, as we think it our duty, to be subject to "the powers that be," wherever our lot may be cast.

Consider Arms, }
Malichi Maynard, } *Conway.*
Samuel Field, *Deerfield.*

1. For Federalist arguments to this effect see Federal Farmer VIII, 2.8.110 n. 72.

2. This kind of argument was fairly often made by the Federalists, but it is not prominent in the published reports of the Massachusetts deliberations, where the emphasis was on the probable sufficiency of the constitutional checks. See Elliot II, 84–89, 94, 196; see references in Federal Farmer X, 2.8.127 n. 80.

3. In a rather superficial essay published in the *Hampshire Gazette* on 6 February 1788, another Anti-Federalist, Adelos, contended that freedom-loving Massachusettensians could not consistently support a constitution containing this clause. For other discussions of the clause, see Martin 2.4.65 n. 24.

4. The writers here rely on their own recollections rather than published reports of the debates.

5. Cf. Abraham Lincoln, Fragments on Slavery (1 July 1854), in Lincoln, *Collected Works* II, 222–23.

6. Exodus 21:16.

7. The published reports of the Massachusetts ratifying convention contain very brief and mainly summary accounts of the discussions of slavery; here and in their subsequent references the writers seem to be relying on their own recollections of the debates.

8. *Report of a Committee of the Inhabitants . . . on the Rights of the Colonists* (Boston 1772), Evans, *Early American Imprints* no. 12331.

9. This statement was not included in the published reports. But see the remark of Thomas Dawes, Elliot II, 41: "although slavery is not smitten by an apoplexy, yet it has received a mortal wound and will die of a consumption." See James Wilson, Elliot II, 452; McMaster and Stone 312. Philanthrop makes the dubious argument that without this provision Congress would have now power to eliminate the slave trade. *Hampshire Gazette* 23 April 1788. See Cincinnatus II, 6.1.12 n. 10.

10. Consider Arms and his friends were wrong in thinking that Congress would not exercise its power to prohibit the slave trade, which was in fact prohibited as of 1 January 1808; but they were right in the deeper thought that the sense of the evil of slavery would decline as the years passed. See Lincoln's 1857 speech on the Dred Scott decision, in Lincoln, *Collected Works II,* 398–410.

11. Massachusetts Constitution, 1780, Declaration of Rights, Art. I; Thorpe, *Federal and State Constitutions* III, 1889.

12. The reference may be to William Heath's statement: "Each state is sovereign and independent to a certain degree, and the states have a right, and they will regulate their own internal affairs as to themselves appears proper; and shall we refuse to eat, or to drink, or to be united with those who do not think, or act just as we do?" Elliot II, 115. Philanthrop contended that "The idea that by civil connections, we become partakers of each others sins, I believe is of late date." *Hampshire Gazette* 23 April 1788. Or, as Oliver Ellsworth put it, with Yankee narrowness, "Their consciences are their own, tho' their wealth and strength are blended with ours." Ford, *Essays* 164. The more general Federalist argument, however, conceded that the United States was a moral community as well as a community of interest and contended that the Constitution was in principle fundamentally anti-slavery and in practice a solid step in the direction of the abolition of slavery. See the good statement of Tench Coxe, Ford,

Pamphlets 146. See Jaffa, *Crisis of the House Divided* passim; Herbert J. Storing, "Slavery and the Moral Foundations of the American Republic," *The Moral Foundations of the American Republic*, ed. Robert Horwitz (Charlottesville 1977); Phileleutheros 4.27.

13. See above, n. 7.

14. Evans, *Early American Imprints* no. 13732.

Essay by Phileleutheros

HAMPSHIRE GAZETTE
21 May 1788

The objections of Consider Arms and his friends were answered by Philanthrop in the *Hampshire Gazette*, 23 April 1788, which in turn gave rise to an exchange with Phileleutheros, whose first essay follows. The author pursues the issue of the extent of the involvement of the free states in the sin of Southern slavery and its implications for American civil society.

Quid miseros toties in operta Pericula-Cives, projitus
Virgil.[1]

I have somewhat to say in regard to a piece under the signature of *Philanthrop*, inserted in the Hampshire Gazette of April 23, intended as an answer to the three gentlemen, who have lately published their reasons of dissent from the Federal Constitution[2]—Herein I shall study brevity. 4.27.1

It would seem Philanthrop had been for some time in hard labour, and for all that appears to the contrary, his travail is likely to continue; for it seems he has not yet brought forth; and from his complaints, there is no prospect of a speedy delivery; and therefore, according to the common course of things, his dissolution must soon ensue, unless some skilful operator should step in and facilitate the birth. But to drop the metaphor—Philanthrop seems to be perplexed, not being able to spy out the cause of the publication of those three gentlemen. And it would seem, he has been as hard put to it to obviate their objections, as to investigate their designs. It matters not, that I know of, to Philanthrop, what their intention was. It is evident (if we take his own words for it) that he is by no means assured they had a bad one; for says he, "I am at a loss to conjecture what motives occasioned their publications." Therefore one would think that candour, he recommends to the gentlemen, would have induced him to suppose they had nothing very atrocious in view. In considering this piece, I shall (setting aside sophistry) do pretty much as Philanthrop has done, in animadverting upon the objections. 4.27.2

I shall not confine myself to order—I think he did not—and if *it should so happen*, I find any thing I cannot censure[?]. I shall follow his example and say nothing about it.

4.27.3 He says, "he hopes if charity obliges them to bless the negroes, it will not lead them to curse the Convention"—this is evidently intended as a sarcasm upon the gentlemen, for vindicating the injured rights of the Africans. Why is it thus? Is it because their colour is not so fashionable in this country as in Africa? Or that their features are not supposed to be so beautifully arranged as those of the Americans, and therefore not to be treated with that humanity which it is generally thought belongs to white people? Or does Philanthrop suppose, with some scoffers at sacred history, that those Africans did not proceed from the loins of the same parent with himself, and so on that score to be treated like brutes? He seems to charge them with cursing the Convention, only because they said that body voted for those barbarities which are exercised towards the Africans. Does this amount to a curse? can rehersing a plain matter of fact, concerning any man or body of men, by good logic, be construed into a curse? Did not the Convention vote, that the Congress should not have it in their power to prohibit the slave-trade until the year eighteen hundred and eight? Were they not sensible, therefore, that this trade would be carried on, with all those barbarities annexed to it?[3] Did they not very generally confess that it was a most wicked piece of business? Where then is the great crime in saying such barbarities were voted for? If it is so, let Philanthrop point out the criminality of it, and no doubt he will obtain credence. If he make a charge he ought certainly to adduce some proof to support it. He must be possessed of some entirely new constructed spy-glass, else he never could have spied out curses where there were none. As little ground had he to dream, from any which dropped from the gentlemen, that they had a desire to return back to Great-Britain, as he had to tax them with cursing the Convention. Two constitutions were offered to the people of Massachusetts before one could obtain. Must we infer from thence, that those who opposed the first, did it with a view of becoming subject to Great-Britain? Let him answer, if he please.

4.27.4 I wish, seeing Philanthrop thought fit to take the matter up, that he had made use of less false reasoning—I will give an instance of it. He says, "While under Great-Britain, we heard nothing from the gentlemen, because that nation more than any under heaven, carried on that trade;" and "that whenever a neighbour had imported a slave, their duty was either to drive him out of the country or to quit it themselves." It would not, one would think, require a degree of discernment far beyond mediocrity, to discover the falacy of this argument. Will the gentleman pretend there is no difference between a man's being born under a government, in the framing of which, consequently he could have no hand, and in making one himself? If a man in a state of nature assists in forming a constitution, which gives countenance to iniquity and all kinds of cruelty, does he not by his own act

incur guilt to his conscience? But if he is born under such a government, where is the guilt? Neither hath he any right to take upon himself the office of an executioner, and so undertake to punish those who are guilty, as Philanthrop would suppose—all he can have any right to is to remonstrate and exhort. He indeed may share in the calamities which may fall upon the community in consequence thereof; but he has this consolation, that those calamities are not derived through his means, and therefore he cannot share in the guilt.

When a man is called to establish a frame of government, it ought to be such an one as his conscience will justify, or he must give his voice against it. I must say the whole Philanthrop has said on this subject is falacious, from the foundation to the top-stone. His first position seems calculated to deceive the people, whether designedly or not, I do not say—the purport of which is evidently this, that by civil connections people cannot become partakers of each others sins.[4] What is the import of "civil connections?" Let them import what they will, it is evident Philanthrop would have us think, that in establishing this constitution, we have no more connection in the wickedness which the southern states may commit, with our hearty and free consent and engagements to support them in, than we should be with any one nation under heaven in their inequities, provided we had connected with them for the sake of their trade, &c. But these are not parallel—I wish Philanthrop had ingenuity enough to confess it. It is idle for him to pretend, that establishing this constitution is no more than barely establishing certain civil connections with the southern states; was this the case I would agree with him. I am sensible America may enter into a treaty and connect with Spain for certain purposes, and still not become partakers in the iniquity of the inquisition. But if America and Spain were about to form themselves into one politic national body, and America should in that case pledge to Spain their lives and fortunes for the support of the inquisition, (*cousin german, to the slave-trade) I should certainly suppose, upon good grounds, they would become partakers of the sin, connected with the inquisition. But lest I should be too lengthy, I shall wave what I have to say further upon Philanthrop's piece, until another opportunity, only adding my wish, that if he writes again, his sentiments may better agree with his signature. 4.27.5

Phileleutheros.

*Rather twin brother.

1. Virgil, *Aeneid* XI, 360–61.
2. See Consider Arms et al. 4.26.
3. On the slave trade, see above Martin 2.4.65 n. 24.
4. See Consider Arms et al. 4.26.13 n. 11.

Observations On the New Constitution, And on the Federal and State Conventions. By A Columbian Patriot

Boston, 1788

This pamphlet was written some time after the ratification of the Constitution by Massachusetts (16 February 1788) and before the ratification of Maryland (26 April 1788). It is known to have been distributed in New York and probably elsewhere.[1] Although formerly attributed to Elbridge Gerry, the author has now been persuasively identified by Charles Warren as his ancestor, Mercy Otis Warren.[2] An active member of Massachusetts intellectual and political circles, Mrs. Warren, the sister of James Otis and wife of James Warren, was the author of several plays and poems, many on political themes. Her most ambitious work was an excellent three-volume account of the Revolution, *The History of the Rise, Progress and Termination of the American Revolution*. A comparison of A Columbian Patriot with the last chapters of this history tends to confirm her authorship of the former, for there are many close parallels of both substance and style.[3]

The essay opens with reflections on the changes that revolutions produce in the character of a people and the dangers to Americans of the present period. The body of the essay consists of a list of eighteen objections to the Constitution (4.28.4). In the first the author describes this complex government, this "heterogeneous phantom" or "favored bantling," so inconsistent with simple, responsible government (1, 9). Objections are made to the following: the absence of a provision for liberty of the press and rights of conscience (2); the extensive original and appellate judiciary powers and the "abolition" of trial by jury in civil cases (3, 5, 10); the blending of the executive and the legislative powers (5); the provisions for the army and militia (6); the absence of a capacity of self-defense by the states and the attempt to provide a single legislature for such a large territory (7, 15); the inadequate representation in the general government (11, 12, 13); the ab-

sence of a bill of rights (14); the unauthorized proposal of a new consolidated system (16); and the proposed mode of ratification (17–18).

The author concludes with a strong criticism of the proceedings in the Massachusetts convention and a call for a new convention. Warning against the effects of monarchy and aristocracy on the American character and public virtue (4.28.8), she speculates on the actions of the state conventions yet to meet, points to the need and the possibility of leaders "who have genius and capacity sufficient to form the manners and correct the morals of the people, and virtue enough to lead their country to freedom" (4.28.12).

While the bulk of the essay is a rather florid version of standard arguments—Robert Rutland refers to "the strident tones of Mercy Warren's scorching pamphlet"[4]—A Columbian Patriot is at the same time more philosophical than most of her fellows. She penetrates deeper than most into a favorite Anti-Federal theme, the relation of forms of government and the character of the people. And in the last two pages (4.28.12–13) the author touches, though she does not develop, a great theme of republican government, in her acknowledgment of the need for high statesmanship (at this and, by implication, other critical moments) but at the same time her denial that this proves the incapacity of the people to govern themselves. In a very rare note, the essay concludes with the reflection that if the issue over the Constitution is decided wrongly and freedom lost, the "sublimer characters, the philosophic lovers of freedom" must needs "retire to the calm shades of contemplation, [and] there they may look down with pity on the inconsistency of human nature, the revolutions of states, the rise of kingdoms, and the fall of empires."

1. Main, *The Antifederalists* 235.
2. Massachusetts Historical Society, *Proceedings* 64 (1932): 143–64.
3. A lengthy extract from the concluding chapters of Mercy Warren's *History* is printed below, 6.14.
4. *The Ordeal of the Constitution* 41.

Sic transit gloria Americana.

Mankind may amuse themselves with theoretick systems of liberty, and trace its social and moral effects on sciences, virtue, industry, and every improvement of which the human mind is capable; but we can only discern its true value by the practical and wretched effects of slavery; and thus dreadfully will they be realized, when the inhabitants of the Eastern States are dragging out a miserable existence, *only* on the gleanings of their fields; and the Southern, blessed with a softer and more fertile climate, are languishing in hopeless poverty; and when asked, what is become of the flower of their crop, and the rich produce of their farms—they may answer in the 4.28.1

hapless stile of the Man of *La Mancha*,—"The steward of my Lord has seized and sent it to *Madrid*."[1]—Or, in the more literal language of truth, The *exigencies* of government require that the collectors of the revenue should transmit it to the *Federal City*.

4.28.2 Animated with the firmest zeal for the interest of this country, the peace and union of the American States, and the freedom and happiness of a people who have made the most costly sacrifices in the cause of liberty,—who have braved the power of Britain, weathered the convulsions of war, and waded thro' the blood of friends and foes to establish their independence and to support the freedom of the human mind; I cannot silently witness this degradation without calling on them, before they are compelled to blush at their own servitude, and to turn back their languid eyes on their lost liberties—to consider, that the character of nations generally changes at the moment of revolution.—And when patriotism is discountenanced and publick virtue becomes the ridicule of the sycophant—when every man of liberality, firmness, and penetration, who cannot lick the hand stretched out to oppress, is deemed an enemy to the State—then is the gulph of despotism set open, and the grades to slavery, though rapid, are scarce perceptible—then genius drags heavily its iron chain—science is neglected, and real merit flies to the shades for security from reproach—the mind becomes enervated, and the national character sinks to a kind of apathy with only energy sufficient to curse the breast that gave it milk, and as an elegant writer observes, "To bewail every new birth as an encrease of misery, under a government where the mind is necessarily debased, and talents are seduced to become the panegyrists of usurpation and tyranny." He adds, "that even sedition is not the most indubitable enemy to the publick welfare; but that its most dreadful foe is despotism, which always changes the character of nations for the worse, and is productive of nothing but vice, that the tyrant no longer excites to the pursuits of glory or virtue; it is not talents, it is baseness and servility that he cherishes, and the weight of arbitrary power destroys the spring of emulation."* If such is the influence of government on the character and manners, and undoubtedly the observation is just, must we not subscribe to the opinion of the celebrated *Abbé Mablé?* "That there are disagreeable seasons in the unhappy situation of human affairs, when policy requires both the intention and the power of doing mischief to be punished; and that when the senate proscribed the memory of *Caesar* they ought to have put *Anthony* to death, and extinguished the hopes of *Octavius*."[3] Self defence is a primary law of nature, which no subsequent law of society can abolish; this primœval principle, the immediate gift of the Creator, obliges every one to remonstrate against the strides of ambition, and a wanton lust of domination, and to resist the first approaches of tyranny, which at this day threaten to sweep away the rights for which the

*Helvitius.[2]

brave sons of America have fought with an heroism scarcely paralleled even in ancient republicks. It may be repeated, they have purchased it with their blood, and have gloried in their independence with a dignity of spirit, which has made them the admiration of philosophy, the pride of America, and the wonder of Europe. It has been observed, with great propriety, that "the virtues and vices of a people when a revolution happens in their government, are the measure of the liberty or slavery they ought to expect—An heroic love for the publick good, a profound reverence for the laws, a contempt of riches, and a noble haughtiness of soul, are the only foundations of a free government."* Do not their dignified principles still exist among us? Or are they extinguished in the breasts of Americans, whose fields have been so recently crimsoned to repel the potent arm of a foreign Monarch, who had planted his engines of slavery in every city, with design to erase the vestiges of freedom in this his last asylum. It is yet to be hoped, for the honour of human nature, that no combinations either foreign or domestick have thus darkened this Western hemisphere.—On these shores freedom has planted her standard, diped in the purple tide that flowed from the veins of her martyred heroes; and here every uncorrupted American yet hopes to see it supported by the vigour, the justice, the wisdom and unanimity of the people, in spite of the deep-laid plots, the secret intrigues, or the bold effrontery of those interested and avaricious adventurers for place, who intoxicated with the ideas of distinction and preferment, have prostrated every worthy principle beneath the shrine of ambition. Yet these are the men who tell us republicanism is dwindled into theory—that we are incapable of enjoying our liberties—and that we must have a master.—Let us retrospect the days of our adversity, and recollect who were then our friends; do we find them among the sticklers for aristocratick authority? No, they were generally the same men who now wish to save us from the distractions of anarchy on the one hand, and the jaws of tyranny on the other; where then were the class who now come forth importunately urging that our political salvation depends on the adoption of a system at which freedom spurns?—Were not some of them hidden in the corners of obscurity, and others wrapping themselves in the bosom of our enemies for safety? Some of them were in the arms of infancy; and others speculating for fortune, by sporting with public money; while a few, a very few of them were magnanimously defending their country, and raising a character, which I pray heaven may never be sullied by aiding measures derogatory to their former exertions. But the revolutions in principle which time produces among mankind, frequently exhibits the most mortifying instances of human weakness; and this alone can account for the extraordinary appearance of a few names, once distinguished in the honourable walks of patriotism, but now found on the list of the Massachusetts assent to the ratification of a

*Abbé Mablé.[4]

Constitution, which, by the undefined meaning of some parts, and the ambiguities of expression in others, is dangerously adapted to the purposes of an immediate *aristocratic tyranny;* that from the difficulty, if not impracticability of its operation, must soon terminate in the most *uncontrouled despotism.*

4.28.3 All writers on government agree, and the feelings of the human mind witness the truth of these political axioms, that man is born free and possessed of certain unalienable rights—that government is instituted for the protection, safety, and happiness of the people, and not for the profit, honour, or private interest of any man, family, or class of men—That the origin of all power is in the people, and that they have an incontestible right to check the creatures of their own creation, vested with certain powers to guard the life, liberty and property of the community: And if certain selected bodies of men, deputed on these principles, determine contrary to the wishes and expectations of their constituents, the people have an undoubted right to reject their decisions, to call for a revision of their conduct, to depute others in their room, or if they think proper, to demand further time for deliberation on matters of the greatest moment: it therefore is an unwarrantable stretch of authority or influence, if any methods are taken to preclude this reasonable, and peaceful mode of enquiry and decision. And it is with inexpressible anxiety, that many of the best friends to the Union of the States—to the peaceable and equal participation of the rights of nature, and to the glory and dignity of this country, behold the insiduous arts, and the strenuous efforts of the partisans of arbitrary power, by their vague definitions of the best established truths, endeavoring to envelope the mind in darkness the concomitant of slavery, and to lock the strong chains of domestic despotism on a country, which by the most glorious and successful struggles is but newly emancipated from the sceptre of foreign dominion.—But there are certain seasons in the course of human affairs, when Genius, Virtue, and Patriotism, seems to nod over the vices of the times, and perhaps never more remarkably, than at the present period; or we should not see such a passive disposition prevail in some, who we must candidly suppose, have liberal and enlarged sentiments; while a supple multitude are paying a blind and idolatrous homage to the opinions of those who by the most precipitate steps are treading down their dear bought privileges; and who are endeavouring by all the arts of insinuation, and influence, to betray the people of the United States, into an acceptance of a most complicated system of government; marked on the one side with the *dark, secret* and *profound intrigues*, of the statesman, long practiced in the purlieus of despotism; and on the other, with the ideal projects of *young ambition*, with its wings just expanded to soar to a summit, which imagination has painted in such gawdy colours as to intoxicate the *inexperienced votary*, and send *him* rambling from State to State, to collect materials to construct the ladder of preferment.

But as a variety of objections to the *heterogeneous phantom*, have been repeatedly laid before the public, by men of the best abilities and intentions; I will not expatiate long on a Republican *form* of government, founded on the principles of monarchy—a democratick branch with the *features* of aristocracy—and the extravagance of nobility pervading the minds of many of the candidates for office, with the poverty of peasantry hanging heavily on them, and insurmountable, from their taste for expence, unless a generous provision should be made in the arrangement of the civil list, which may enable them with the champions of their cause to *"sail down the new pactolean channel."* Some gentlemen with laboured zeal, have spent much time in urging the necessity of government, from the embarrassments of trade—the want of respectability abroad and confidence in the public engagements at home:—These are obvious truths which no one denies; and there are few who do not unite in the general wish for the restoration of public faith, the revival of commerce, arts, agriculture, and industry, under a lenient, peaceable and energetick government: But the most sagacious advocates for the party have not by fair discusion, and rational argumentation, evinced the necessity of adopting this many-headed monster; of such motley mixture, that its enemies cannot trace a feature of Democratick or Republican extract; nor have its friends the courage to denominate it a Monarchy, an Aristocracy, or an Oligarchy, and the favoured bantling must have passed through the short period of its existence without a name, had not Mr. *Wilson*, in the fertility of his genius, suggested the happy epithet of a *Federal Republic*[5]—But I leave the field of general censure on the secrecy of its birth, the rapidity of its growth, and the fatal consequences of suffering it to live to the age of maturity, and will particularize some of the most weighty objections to its passing through this continent in a gigantic size.—It will be allowed by every one that the fundamental principle of a free government, is the equal representation of a free people—And I will *first* observe with a justly celebrated writer, "That the principal aim of society is to protect individuals in the absolute rights which were vested in them by the immediate laws of nature, but which could not be preserved in peace, without the mutual intercourse which is gained by the institution of friendly and social communities."[6] And when society has thus deputed a certain number of their equals to take care of their personal rights, and the interest of the whole community, it must be considered that responsibility is the great security of integrity and honour; and that annual election is the basis of responsibility.—Man is not immediately corrupted, but power without limitation, or amenability, may endanger the brightest virtue—whereas a frequent return to the bar of their Constituents is the strongest check against the corruptions to which men are liable, either from the intrigues of others of more subtle genius, or the propensities of their own hearts,—and the gentlemen who have so warmly advocated in the late Convention of the Massachusetts, the change from annual to biennial elections;[7]

4.28.4

may have been in the same predicament, and perhaps with the same views that Mr. *Hutchinson* once acknowledged himself, when in a letter to *Lord Hillsborough*, he observed, "that the grand difficulty of making a change in government against the general bent of the people had caused him to turn his thoughts to a variety of plans, in order to find one that might be executed in spite of opposition," and the first he proposed was that, "instead of annual, the elections should be only once in three years:" but the Minister had not the hardiness to attempt such an innovation, even in the revision of colonial charters:[8] nor has any one ever defended Biennial, Triennial, or Septennial, Elections, either in the British House of Commons, or in the debates of Provincial assemblies, on general and free principles: but it is unnecessary to dwell long on this article, as the best political writers have supported the principles of annual elections with a precision, that cannot be confuted, though they may be darkned, by the sophistical arguments that have been thrown out with design, to undermine all the barriers of freedom.

2. There is no security in the profered system, either for the rights of conscience, or the liberty of the Press: Despotism usually while it is gaining ground, will suffer men to think, say, or write what they please; but when once established, if it is thought necessary to subserve the purposes of arbitrary power, the most unjust restrictions may take place in the first instance, and an *imprimator* on the Press in the next, may silence the complaints, and forbid the most decent remonstrances of an injured and oppressed people.

3. There are no well defined limits of the Judiciary Powers, they seem to be left as a boundless ocean, that has broken over the chart of the Supreme Lawgiver *"thus far shalt thou go and no further,"* and as they cannot be comprehended by the clearest capacity, or the most sagacious mind, it would be an Herculean labour to attempt to describe the dangers with which they are replete.

4. The Executive and the Legislative are so dangerously blended as to give just cause of alarm, and every thing relative thereto, is couched in such ambiguous terms—in such vague and indefinite expression, as is a sufficient ground without any other objection, for the reprobation of a system, that the authors dare not hazard to a clear investigation.

5. The abolition of trial by jury in civil causes.—This mode of trial the learned Judge Blackstone observes, "has been coeval with the first rudiments of civil government, that property, liberty and life, depend on maintaining in its legal force the constitutional trial by jury." He bids his readers pauze, and with Sir Matthew Hale observes, how admirably this mode is adapted to the investigation of truth beyond any other the world can produce.[9] Even the party who have been disposed to swallow, without examination, the proposals of the *secret conclave*, have started on a discovery that this essential right was curtailed; and shall a privilege, the origin of which may be traced to our Saxon ancestors—that has been a part of the law

of nations, even in the fewdatory systems of France, Germany and Italy—and from the earliest records has been held so sacred, both in ancient and modern Britain, that it could never be shaken by the introduction of Norman customs, or any other conquests or change of government—shall this inestimable privilege be relinquished in America—either thro' the fear of inquisition for unaccounted thousands of public monies in the hands of some who have been officious in the fabrication of the *consolidated system*, or from the apprehension that some future delinquent possessed of more power than integrity, may be called to a trial by his peers in the hour of investigation?

6. Though it has been said by Mr. *Wilson* and many others, that a Standing-Army is necessary for the dignity and safety of America,[10] yet freedom revolts at the idea, when the Divan, or the Despot, may draw out his dragoons to suppress the murmurs of a few, who may yet cherish those sublime principles which call forth the exertions, and lead to the best improvement of the human mind. It is hoped this country may yet be governed by milder methods than are usually displayed beneath the bannerets of military law.—Standing armies have been the nursery of vice and the bane of liberty from the Roman legions, to the establishment of the artful Ximenes, and from the ruin of the Cortes of Spain, to the planting the British cohorts in the capitals of America:—By the edicts of authority vested in the sovereign power by the proposed constitution, the militia of the country, the bulwark of defence, and the security of national liberty is no longer under the controul of civil authority; but at the rescript of the Monarch, or the aristocracy, they may either be employed to extort the enormous sums that will be necessary to support the civil list—to maintain the regalia of power—and the splendour of the most useless part of the community, or they may be sent into foreign countries for the fulfilment of treaties, stipulated by the President and two thirds of the Senate.

7. Notwithstanding the delusory promise to guarantee a Republican form of government to every State in the Union—If the most discerning eye could discover any meaning at all in the engagement, there are no resources left for the support of internal government, or the liquidation of the debts of the State. Every source of revenue is in the monopoly of Congress, and if the several legislatures in their enfebled state, should against their own feelings be necessitated to attempt a dry tax for the payment of their debts, and the support of internal police, even this may be required for the purposes of the general government.

8. As the new Congress are empowered to determine their own salaries, the requisitions for this purpose may not be very moderate, and the drain for public moneys will probably rise past all calculation: and it is to be feared when America has consolidated its despotism, the world will witness the truth of the assertion—"that the pomp of an eastern monarch may impose on the vulgar who may estimate the force of a nation by the magnificence of

its palaces; but the wise man, judges differently, it is by that very magnificence he estimates its weakness. He sees nothing more in the midst of this imposing pomp, where the tyrant sets enthroned, than a sumptuous and mournful decoration of the dead; the apparatus of a fastuous funeral, in the centre of which is a cold and lifeless lump of unanimated earth, a phantom of power ready to disappear before the enemy, by whom it is despised!"[11]

9. There is no provision for a rotation, nor any thing to prevent the perpetuity of office in the same hands for life; which by a little well timed bribery, will probably be done, to the exclusion of men of the best abilities from their share in the offices of government.—By this neglect we lose the advantages of that check to the overbearing insolence of office, which by rendering him ineligible at certain periods, keeps the mind of man in equilibrio, and teaches him the feelings of the governed, and better qualifies him to govern in his turn.

10. The inhabitants of the United States, are liable to be draged from the vicinity of their own county, or state, to answer to the litigious or unjust suit of an adversary, on the most distant borders of the Continent: in short the appelate jurisdiction of the Supreme Federal Court, includes an unwarrantable stretch of power over the liberty, life, and property of the subject, through the wide Continent of America.

11. One Representative to thirty thousand inhabitants is a very inadequate representation; and every man who is not lost to all sense of freedom to his country, must reprobate the idea of Congress altering by law, or on any pretence whatever, interfering with any regulations for the time, places, and manner of choosing our own Representatives.

12. If the sovereignty of America is designed to be elective, the circumscribing the votes to only ten electors in this State, and the same proportion in all the others, is nearly tantamount to the exclusion of the voice of the people in the choice of their first magistrate. It is vesting the choice solely in an aristocratic junto, who may easily combine in each State to place at the head of the Union the most convenient instrument for despotic sway.

13. A Senate chosen for six years will, in most instances, be an appointment for life, as the influence of such a body over the minds of the people will be coequal to the extensive powers with which they are vested, and they will not only forget, but be forgotten by their constituents—a branch of the Supreme Legislature thus set beyond all responsibility is totally repugnant to every principle of a free government.

14. There is no provision by a bill of rights to guard against the dangerous encroachments of power in too many instances to be named: but I cannot pass over in silence the insecurity in which we are left with regard to warrants unsupported by evidence—the daring experiment of granting *writs of*

assistance in a former arbitrary administration is not yet forgotten in the Massachusetts; nor can we be so ungrateful to the memory of the patriots who counteracted their operation, as so soon after their manly exertions to save us from such a detestable instrument of arbitrary power, to subject ourselves to the insolence of any petty revenue officer to enter our houses, search, insult, and seize at pleasure. We are told by a gentleman of too much virtue and real probity to suspect he has a design to deceive—"that the whole constitution is a declaration of rights"—but mankind must think for themselves, and to many very judicious and discerning characters, the whole constitution with very few exceptions appears to perversion of the rights of particular states, and of private citizens.—But the gentleman goes on to tell us, "that the primary object is the general government, and that the rights of individuals are only incidentally mentioned, and that there was a clear impropriety in being very particular about them."[12] But, asking pardon for dissenting from such respectable authority, who has been led into several mistakes, more from his prediliction in favour of certain modes of government, than from a want of understanding or veracity. The rights of individuals ought to be the primary object of all government, and cannot be too securely guarded by the most explicit declarations in their favor. This has been the opinion of the Hampdens, the Pyms, and many other illustrious names, that have stood forth in defence of English liberties; and even the Italian master in politicks, the subtle and renouned Machiavel acknowledges, that no republic ever yet stood on a stable foundation without satisfying the common people.[13]

15. The difficulty, if not impracticability, of exercising the equal and equitable powers of government by a single legislature over an extent of territory that reaches from the Missisippi to the Western lakes, and from them to the Atlantic ocean, is an insuperable objection to the adoption of the new system.—Mr. *Hutchinson,* the great champion for arbitrary power, in the multitude of his machinations to subvert the liberties of this country, was obliged to acknowledge in one of his letters, that, from the extent of country from north to south, the scheme of one government was impracticable." But if the authors of the present visionary project, can by the arts of deception, precipitation and address, obtain a majority of suffrages in the conventions of the states to try the hazardous experiment, they may then make the same inglorious boast with this insidious politician, who may perhaps be their model, that "the union of the colonies was pretty well broken, and that he hoped never to see it revewed."[14]

16. It is an indisputed fact, that not one legislature in the United States had the most distant idea when they first appointed members for a convention, entirely commercial, or when they afterwards authorised them to consider on some amendments of the Federal union, that they would without any warrant from their constituents, presume on so bold and daring a stride,

as ultimately to destroy the state governments, and offer a *consolidated system*, irreversible but on conditions that the smallest degree of penetration must discover to be impracticable.

17. The first appearance of the article which declares the ratification of nine states sufficient for the establishment of the new system, wears the face of dissention, is a subversion of the union of the Confederated States, and tends to the introduction of anarchy and civil convulsions, and may be a means of involving the whole country in blood.

18. The mode in which this constitution is recommended to the people to judge without either the advice of Congress, or the legislatures of the several states, is very reprehensible—it is an attempt to force it upon them before it could be thoroughly understood, and may leave us in that situation, that in the first moments of slavery the minds of the people agitated by the remembrance of their lost liberties, will be like the sea in a tempest, that sweeps down every mound of security.

4.28.5 But it is needless to enumerate other instances, in which the proposed constitution appears contradictory to the first principles which ought to govern mankind; and it is equally so to enquire into the motives that induced to so bold a step as the annihilation of the independence and sovereignty of the thirteen distinct states.—They are but too obvious through the whole progress of the business, from the first shutting up the doors of the federal convention and resolving that no member should correspond with gentlemen in the different states on the subject under discussion; till the trivial proposition of *recommending* a few amendments was artfully ushered into the convention of the Massachusetts. The questions that were then before that honorable assembly were profound and important, they were of such magnitude and extent, that the consequences may run parallel with the existence of the country; and to see them waved and hastily terminated by a measure too absurd to require a serious refutation, raises the honest indignation of every true lover of his country. Nor are they less grieved that the ill policy and arbitrary disposition of some of the sons of America has thus precipitated to the contemplation and discusion of questions that no one could rationally suppose would have been agitated among us, till time had blotted out the principles on which the late revolution was grounded; or till the last traits of the many political tracts, which defended the seperation from Britain, and the rights of men were consigned to everlasting oblivion. After the severe conflicts this country has suffered, it is presumed that they are disposed to make every reasonable sacrifice before the altar of peace.—But when we contemplate the nature of men and consider them originally on an equal footing, subject to the same feelings, stimulated by the same passions, and recollecting the struggles they have recently made, for the security of their civil rights; it cannot be expected that the inhabitants of the Massachusetts, can be easily lulled into a fatal security, by the declamatory effusions of gentlemen, who, contrary to the experience of all

ages would persuade them there is no danger to be apprehended, from vesting discretionary powers in the hands of man, which he may, or may not abuse. The very suggestion, that we ought to trust to the precarious hope of amendments and redress, after we have voluntarily fixed the shackles on our own necks should have awakened to a double degree of caution.—This people have not forgotten the artful insinuations of a former Governor, when pleading the unlimited authority of parliament before the legislature of the Massachusetts; nor that his arguments were very similar to some lately urged by gentlemen who boast of opposing his measures, *"with halters about their necks."*[15]

We were then told by him, in all the soft language of insinuation, that no form of government of human construction can be perfect—that we had nothing to fear—that we had no reason to complain—that we had only to acquiesce in their illegal claims, and to submit to the requisitions of parliament, and doubtless the lenient hand of government would redress all grievances, and remove the oppressions of the people:—[16]Yet we soon saw armies of mercenaries encamped on our plains—our commerce ruined—our harbours blockaded—and our cities burnt. It may be replied, that this was in consequence of an obstinate defence of our privileges; this may be true; and when the *"ultima ratio"* is called to aid, the weakest must fall. But let the best informed historian produce an instance when bodies of men were intrusted with power, and the proper checks relinquished, if they were ever found destitute of ingenuity sufficient to furnish pretences to abuse it. And the people at large are already sensible, that the liberties which America has claimed, which reason has justified, and which have been so gloriously defended by the sword of the brave; are not about to fall before the tyranny of foreign conquest: it is native usurpation that is shaking the foundations of peace, and spreading the sable curtain of despotism over the United States. The banners of freedom were erected in the wilds of America by our ancestors, while the wolf prowled for his prey on the one hand, and more savage man on the other; they have been since rescued from the invading hand of foreign power, by the valor and blood of their posterity; and there was reason to hope they would continue for ages to illumine a quarter of the globe, by nature kindly seperated from the proud monarchies of Europe, and the infernal darkness of Asiatic slavery.—And it is to be feared we shall soon see this country rushing into the extremes of confusion and violence, in consequence of the proceedings of a set of gentlemen, who disregarding the purposes of their appointment, have assumed powers unauthorised by any commission, have unnecessarily rejected the confederation of the United States, and annihilated the sovereignty and independence of the individual governments.—The causes which have inspired a few men assembled for very different purposes with such a degree of temerity as to break with a single stroke the union of America, and disseminate the seeds of discord through the land may be easily investigated, when we survey the

4.28.6

partizans of monarchy in the state conventions, urging the adoption of a mode of government that militates with the former professions and exertions of this country, and with all ideas of republicanism, and the equal rights of men.

4.28.7 Passion, prejudice, and error, are characteristics of human nature; and as it cannot be accounted for on any principles of philosophy, religion, or good policy; to these shades in the human character must be attributed the mad zeal of some, to precipitate to a blind adoption of the measures of the late federal convention, without giving opportunity for better information to those who are misled by influence or ignorance into erroneous opinions.—Litterary talents may be prostituted, and the powers of genius debased to subserve the purposes of ambition, or avarice; but the feelings of the heart will dictate the language of truth, and the simplicity of her accents will proclaim the infamy of those, who betray the rights of the people, under the specious, and popular pretence of *justice, consolidation,* and *dignity.*

4.28.8 It is presumed the great body of the people unite in sentiment with the writer of these observations, who most devoutly prays that public credit may rear her declining head, and remunerative justice pervade the land; nor is there a doubt if a free government is continued, that time and industry will enable both the public and private debtor to liquidate their arrearages in the most equitable manner. They wish to see the Confederated States bound together by the most indissoluble union, but without renouncing their seperate sovereignities and independence, and becoming tributaries to a consolidated fabrick of aristocratick tyranny.—They wish to see government established, and peaceably holding the reins with honour, energy, and dignity; but they wish for no *federal city* whose *"cloud cap't towers"* may screen the state culprit from the hand of justice; while its exclusive jurisdiction may protect the riot of armies encamped within its limits.—They deprecate discord and civil convulsions, but they are not yet generally prepared with the ungrateful Israelites to ask a King, nor are their spirits sufficiently broken to yield the best of their olive grounds to his servants, and to see their sons appointed to run before his chariots—It has been observed by a zealous advocate for the new system, that most governments are the result of fraud or violence,[17] and this with design to recommend its acceptance—but has not almost every step towards its fabrication been fraudulent in the extreme? Did not the prohibition strictly enjoined by the general Convention, that no member should make any communication to his Constituents, or to gentlemen of consideration and abilities in the other States, bear evident marks of fraudulent designs?—This circumstance is regretted in strong terms by Mr. Martin, a member from Maryland, who acknowledges "He had no idea that all the wisdom, integrity, and virtue of the States was contained in that Convention, and that he wished to have corresponded with gentlemen of eminent political characters abroad, and to give their sentiments due weight"—he adds, "so extremely solicitous were they, that their

proceedings should not transpire, that the members were prohibited from taking copies of their resolutions, or extracts from the Journals, without express permission, by vote."[18]—And the hurry with which it has been urged to the acceptance of the people, without giving time, by adjournments, for better information, and more unanimity has a deceptive appearance; and if finally driven to resistance, as the only alternative between that and servitude, till in the confusion of discord, the reins should be seized by the violence of some enterprizing genius, that may sweep down the last barrier of liberty, it must be added to the score of criminality with which the fraudulent usurpation at Philadelphia, may be chargeable.—Heaven avert such a tremendous scene! and let us still hope a more happy termination of the present ferment:—may the people be calm, and wait a legal redress; may the mad transport of some of our infatuated capitals subside; and every influential character through the States, make the most prudent exertions for a new general Convention, who may vest adequate powers in Congress, for all national purposes, without annihilating the individual governments, and drawing blood from every pore by taxes, impositions and illegal restrictions.—This step might again re-establish the Union, restore tranquility to the ruffled mind of the inhabitants, and save America from distresses, dreadful even in contemplation.—"The great art of governing is to lay aside all prejudices and attachments to particular opinions, classes or individual characters; to consult the spirit of the people; to give way to it; and in so doing, to give it a turn capable of inspiring those sentiments, which may induce them to relish a change, which an alteration of circumstances may hereafter make necessary."[19]—The education of the advocates for monarchy should have taught them, and their memory should have suggested that "monarchy is a species of government fit only for a people too much corrupted by luxury, avarice, and a passion for pleasure, to have any love for their country, and whose vices the fear of punishment alone is able to restrain; but by no means calculated for a nation that is poor, and at the same time tenacious of their liberty—animated with a disgust to tyranny—and inspired with the generous feelings of patriotism and liberty, and at the same time, like the ancient Spartans have been hardened by temperance and manly exertions, and equally despising the fatigues of the field, and the fear of enemies,"[20]—and while they change their ground they should recollect, that Aristocracy is still a more formidable foe to public virtue, and the prosperity of a nation—that under such a government her patriots become mercenaries—her soldiers, cowards, and the people slaves.—Though several State Conventions have assented to, and ratified, yet the voice of the people appears at present strong against the adoption of the Constitution.—By the chicanery, intrigue, and false colouring of those who plume themselves, more on their education and abilities, than their political, patriotic, or private virtues—by the imbecility of some, and the duplicity of others, a majority of the Convention of Massachusetts have

been flattered with the ideas of amendments, when it will be too late to complain—While several very worthy characters, too timid for their situation, magnified the hopeless alternative, between the dissolution of the bands of all government, and receiving the proffered system *in toto*, after long endeavouring to reconcile it to their consciences, swallowed the indigestible penacea, and in a kind of sudden desperation lent their signature to the dereliction of the honorable station they held in the Union, and have broken over the solemn compact, by which they were bound to support their own excellent constitution till the period of revision.—Yet Virginia, equally large and respectable, and who have done honour to themselves, by their vigorous exertions from the first dawn of independence, have not yet acted upon the question; they have wisely taken time to consider before they introduce innovations of a most dangerous nature:—her inhabitants are brave, her burgesses are free, and they have a Governor who dares to think for himself, and to speak his opinion (without first pouring libations on the altar of popularity) though it should militate with some of the most accomplished and illustrious characters.

4.28.9 Maryland, who has no local interest to lead her to adopt, will doubtless reject the system—I hope the same characters still live, and that the same spirit which dictated to them a wise and cautious care, against sudden revolutions in government, and made them the last State that acceded to the independence of America, will lead them to support what they so deliberately claimed.—Georgia apprehensive of a war with the Savages, has acceded in order to insure protection.—Pennsylvania has struggled through much in the same manner, as the Massachusetts, against the manly feelings, and the masterly reasonings of a very respectable part of the Convention: They have adopted the system, and seen some of its authors burnt in effigy—their towns thrown into riot and confusion, and the minds of the people agitated by apprehension and discord.

4.28.10 New-Jersey and Delaware have united in the measure, from the locality of their situation, and the selfish motives which too generally govern mankind; the Federal City, and the seat of government, will naturally attract the intercourse of strangers—the youth of enterprize, and the wealth of the nation to the central States.

4.28.11 Connecticut has pushed it through with the precipitation of her neighbour, with few dissentient voices;—but more from irritation and resentment to a sister State, perhaps partiality to herself in her commercial regulations, than from a comprehensive view of the system, as a regard to the welfare of all.—But New-York has motives, that will undoubtedly lead her to a rejection, without being afraid to appeal to the understanding of mankind, to justify the grounds of their refusal to adopt a Constitution, that even the framers dare not risque to the hazard of revision, amendment, or reconsideration, least the whole superstructure should be demolished by more skilful and discreet architects.—I know not what part the Carolinas will

take; but I hope their determinations will comport with the dignity and freedom of this country—their decisions will have great weight in the scale.—But equally important are the small States of New-Hampshire and Rhode-Island:—New-York, the Carolinas, Virginia, Maryland, and these two lesser States may yet support the liberties of the Continent; if they refuse a ratification, or postpone their proceedings till the spirits of the community have time to cool, there is little doubt but the wise measure of another federal convention will be adopted, when the members would have the advantage of viewing, at large, through the medium of truth, the objections that have been made from various quarters; such a measure might be attended with the most salutary effects, and prevent the dread consequences of civil feuds.—But even if some of those large states should hastily accede, yet we have frequently seen in the story of revolution, relief spring from a quarter least expected.

Though the virtues of a Cato could not save Rome, nor the abilities of a Padilla defend the citizens of Castile from falling under the yoke of Charles; yet a *Tell* once suddenly rose from a little obscure city, and boldly rescued the liberties of his country.—Every age has its Bruti and its Decii, as well as its Caesars and Sejani:—The happiness of mankind depends much on the modes of government, and the virtues of the governors; and America may yet produce characters who have genius and capacity sufficient to form the manners and correct the morals of the people, and virtue enough to lead their country to freedom.[21] Since her dismemberment from the British empire, America has, in many instances, resembled the conduct of a restless, vigorous, luxurious youth, prematurely emancipated from the authority of a parent, but without the experience necessary to direct him to act with dignity or discretion. Thus we have seen her break the shackles of foreign dominion, and all the blessings of peace restored on the most honourable terms: She acquired the liberty of framing her own laws, choosing her own magistrates, and adopting manners and modes of government the most favourable to the freedom and happiness of society. But how little have we availed ourselves of these superior advantages: The glorious fabric of liberty successfully reared with so much labour and assiduity totters to the foundation, and may be blown away as the bubble of fancy by the rude breath of military combinations, and politicians of yesterday. 4.28.12

It is true this country lately armed in opposition to regal despotism—impoverished by the expences of a long war, and unable immediately to fulfil their public or private engagements, have appeared in some instances, with a boldness of spirit that seemed to set at defiance all authority, government, or order, on the one hand; while on the other, there has been, not only a secret with, but an open avowal of the necessity of drawing the reins of government much too taught, not only for republicanism, but for a wise and limited monarchy.—But the character of this people is not averse to a degree of subordination: the truth of this appears from the easy restoration 4.28.13

of tranquility, after a dangerous insurrection in one of the states; this also evinces the little necessity of a complete revolution of government throughout the union. But it is a republican principle that the majority should rule; and if a spirit of moderation could be cultivated on both sides, till the voice of the people at large could be fairly heard it should be held sacred—And if, on such a scrutiny, the proposed constitution should appear repugnant to their character and wishes; if they, in the language of a late elegant pen, should acknowledge that "no confusion in my mind, is more terrible to them than the stern disciplined regularity and vaunted police of arbitrary governments, where every heart is depraved by fear, where mankind dare not assume their natural characters, where the free spirit must crouch to the slave in office, where genius must repress her effusions, or like the Egyptian worshippers, offer them in sacrifice to the calves in power, and where the human mind, always in shackles, shrinks from every generous effort."[22] Who would then have the effrontory to say, it ought not to be thrown out with indignation, however some respectable names have appeared to support it.—But if after all, on a dispassionate and fair discussion, the people generally give their voice for a voluntary dereliction of their privileges, let every individual who chooses the active scenes of life, strive to support the peace and unanimity of his country, though every other blessing may expire—And while the statesman is plodding for power, and the courtier practising the arts of dissimulation without check—while the rapacious are growing rich by oppression, and fortune throwing her gifts into the lap of fools, let the sublimer characters, the philosophic lovers of freedom who have wept over her exit, retire to the calm shades of contemplation, there they may look down with pity on the inconsistency of human nature, the revolutions of states, the rise of kingdoms, and the fall of empires.

1. The source of this quotation has not been found.
2. The "elegant writer" has not been identified. On the relation between the laws and the character of the people, see the references in Federal Farmer III, 2.8.24 n. 19.
3. Gabriel Bonnot Mably, *Observations sur les Romains*.
4. Ibid.
5. See McMaster and Stone 221; cf. Martin 2.4.44 n. 12.
6. Blackstone, *Commentaries* I, 124.
7. Elliot II, 4–21.
8. I do not find this letter, but see *Diary and Letters of Thomas Hutchinson* (Boston 1884), letter of July 1775, p. 501.
9. *Commentaries* III, 349, 355.
10. See James Wilson, "Address to the Citizens of Philadelphia," 6 October 1787, McMaster and Stone 145–46. See Brutus VIII, 2.9.97 n. 67.
11. The source of this quotation has not been found.
12. Ex-Governor James Bowdoin, Massachusetts ratifying convention, Elliot II, 87. On the Constitution as a bill of rights, see [Maryland] Farmer II, 5.1.18 n. 12; for other arguments against the need of a bill of rights, see Mason 2.2.1 n. 1.
13. This reference has not been located.
14. The "insidious politician" has not been identified.
15. See Judge Dana, Elliot II, 43.

16. Governor Hutchinson's answer to a report of a committee of the Assembly, 14 July 1772, Hutchinson, *History of the Colony and Province of Massachusetts* III, 546–51.

17. Probably James Wilson in his speech before the Pennsylvania ratifying convention of 24 November: "Government, indeed, taken as a science, yet may be considered in its infancy; and with all its various modifications, it has hitherto been the result of force, fraud, or accident. For, after the lapse of six thousand years since the creation of the world, America now presents the first instance of a people assembled to weigh deliberately and calmly and to decide leisurely and peaceably, upon the form of government by which they will bind themselves and their posterity." McMaster and Stone 221–22. See also A Citizen of America, "An Examination," Ford, Pamphlets 29; and *The Federalist* no. 1, 3 and no. 38, 241.

18. See Martin 2.4.13.

19. The source of this quotation has not been found.

20. The source of this quotation has not been found.

21. On the issue of the perpetuation of republics, see Impartial Examiner 5.14.22 n. 15.

22. The "late elegant pen" has not been identified.

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